Case Western Reserve Journal of International Law

Volume 9 | Issue 2 Article 4

1977

The Laws of War and the Angolan Trial of Mercenaries: Death to the Dogs of War

Mike J. Hoover

Follow this and additional works at: https://scholarlycommons.law.case.edu/jil

Part of the International Law Commons

Recommended Citation

Mike J. Hoover, *The Laws of War and the Angolan Trial of Mercenaries: Death to the Dogs of War*, 9 Case W. Res. J. Int'l L. 323 (1977)
Available at: https://scholarlycommons.law.case.edu/jil/vol9/iss2/4

This Note is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

NOTES

The Laws of War and The Angolan Trial of Mercenaries: Death to the Dogs of War

BETWEEN THE 11th and the 19th of June, 1976, the People's Revolutionary Court of Angola tried and convicted 13 white soldiers on the charge of being mercenaries, finally sentencing nine to prison and four to death.[1] This Note entails an examination of the circumstances of that trial. The narrow focus here will be the aspects of procedural and substantive fairness in the trial, while the broader concern will be the impact of this trial on the development of the laws of war, particularly as regards the status of mercenaries under international law.

This is only the beginning of the larger inquiry which the legal community must undertake. Eventually there should be an examination of the proper ends of the laws of war and also a more current determination of the propriety of the means employed in achieving those ends. The international legal community even now is realizing its obligation and is beginning to test the aphorism: "The end of the law is peace. The means to that end is war."[2] The world beholds the image of Justice herself struggling, one upraised arm holding the scales in which she weighs the right, the other carrying the sword with which she executes it. Within the context of the Angola trial of mercenaries, this Note attempts to determine whether opposing rights were fairly weighed, or whether the cloak of Justice was rent asunder in the execution.

In order to understand the trial, one must know the period and the place in which it occurred. The following is a brief summary of the political and military events which preceded the trial.[3]

---

[1] *ANGOLA: Death for 'Dogs of War'*, NEWSWEEK, Jul. 12, 1976, at 32.

[2] DR. RUDOLPH VON JHERING, THE STRUGGLE FOR LAW 1-2 (2nd ed. J. Labor transl. 1915). The author laments: "So long as the law is compelled to hold itself in readiness to resist the attacks of wrong . . . it cannot dispense with war. The life of the law is a struggle . . . of nations, of the state power, of classes, of individuals . . . ." *Id.*

[3] *See generally* Marcum, *Lessons of Angola*, 54 FOR. AFF. 407 (1976); Ebinger, *External Intervention in Internal War: The Politics and Diplomacy of the Angolan Civil*

BACKGROUND

Twice the size of Texas, with a population of approximately six million people, Angola is considered to be potentially one of the richest countries in southwestern Africa.[4] In April 1974, Portugal's armed forces overthrew the government of Marcello Caetano and the new government moved steadily in the direction of independence for Angola, which had been a Portuguese colony for 500 years. In early 1975, the Portuguese announced the Alvor Accord under which the three native liberation movements would participate with the Portuguese in a transitional government that would operate until the outright grant of independence on November 11, 1975.[5] Having been accorded exclusive political legitimacy by Portugal's new military regime, the three competing insurgent groups fought for political and military power.

Each of Angola's three major ethno-linguistic communities had produced a major liberation movement with a separate army, separate political structure, and separate sources of external support.[6]

The National Front for the Liberation of Angola (FNLA) is led by Holden Roberto and draws its popular support from the 600,000 to 700,000-strong Bakongo community of northern Angola, which comprises about 13% of the population.[7] Roberto's brother-in-law, Mobutu Sese Seko, is President of Zaire and the recepient of substantial military and economic aid from the United States.[8] The FNLA received direct material assistance from the Chinese and financial assistance from the United States.[9] Just as Portugal was trying to arrange the Alvor Accord, the National Security Council's 40 Committee authorized a

---

War, 20 ORBIS 669 (1976). *See also* INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES, STRATEGIC SURVEY 1975 27 (1976), and *CIA's Secret War in Angola*, 1 INTELLIGENCE REPORT 1 (Center for National Security Studies 1975).

[4] STRATEGIC SURVEY and INTELLIGENCE REPORT, *supra* note 3. Angola produces coffee, sugar, cotton, tobacco and other foodstuffs, and has large resources of oil, diamonds and iron ore. The country is also strategically located on the southwest coast of the African continent. Its major ports provide the primary outlet into the Atlantic Ocean for Zambia and Zaire, and its railroads provide the major outlet for their copper.

[5] Marcum, *supra* note 3, at 412-13.

[6] *Id.* at 410.

[7] INTELLIGENCE REPORT, *supra* note 3, at 2.

[8] *Id.* at 4.

[9] Marcum, *supra* note 3, at 410, 413.

covert American grant of $300,000 to the FNLA.[10] As a movement, the FNLA entered the 1975 power struggle from a position of military but not political strength.

The National Union for the Total Independence of Angola (UNITA) resulted from a 1964 split within the FNLA and is directed by Jonas Savimbi, a former Roberto aide.[11] Its base is among the two million Ovimbundu of the central Benguela plateau, who comprise 38% of the population of Angola.[12] Adopting a self-reliant strategy emulating the Chinese, UNITA forces undertook to seize their weapons locally.[13] UNITA did not receive significant outside help until early in 1976, when Savimbi cultivated support from the United States, Britain, Zambia and South Africa.[14]

The Popular Movement for the Liberation of Angola (MPLA) is led by Dr. Agostinho Neto, a Portuguese-educated physician. The MPLA draws its primary support from the 1.3 million Mbundu people of central and eastern Angola, who make up about 23% of the country's population.[15] Based in the capital city of Luanda, where it declared itself the legitimate government of the country on Independence Day, the MPLA leadership is more urban, intellectual, socialist, and racially mixed than that of the other two movements.[16] The MPLA received massive arms support from the Soviet Union and large numbers of combat troops from Cuba.[17]

The internal conflict among these groups thus became the impetus for a superpower collision, as foreign intervention changed the domestic civil war into a potentially explosive cold war confrontation. In January 1976, Secretary of State Kissinger recalled how the situation had appeared to the administration in mid-1975.[18] The military situation favored the MPLA and,

---

[10] *Id.* at 414; STRATEGIC SURVEY, *supra* note 3, at 31.

[11] Marcum, *supra* note 3, at 410-11; INTELLIGENCE REPORT, *supra* note 3, at 2; STRATEGIC SURVEY, *supra* note 3, at 29.

[12] *Id.*

[13] Marcum, *supra* note 3, at 411.

[14] INTELLIGENCE REPORT, *supra* note 3, at 2.

[15] Marcum, *supra* note 3, at 411; INTELLIGENCE REPORT, *supra* note 3, at 2.

[16] *Id.*; STRATEGIC SURVEY, *supra* note 3, at 28.

[17] Marcum, *id.* at 413; INTELLIGENCE REPORT, *id.* at 2; STRATEGIC SURVEY, *id.* at 31.

[18] *Testimony of Secretary of State Kissinger before the Subcommittee on African Affairs of the Senate Foreign Relations Committee*, 122 CONG. REC. S 815-818 (daily ed. Jan. 29, 1976). *See also* Marcum, *supra* note 3, at 415.

therefore, Zaire and Zambia turned to the United States for assistance in preventing the Soviet Union and Cuba from (1) imposing a solution of their own in Angola, (2) becoming a dominant influence in south-central Africa, and (3) threatening the stability of the area.[19] The United States responded covertly by supplying $32.3 million in military hardware to the FNLA and to UNITA by the end of 1975.[20] As of late February 1976, there were over 11,000 Cuban troops in Angola, and Soviet military shipments over the previous 11 months totaled $300 million.[21] In early February, ostensibly fearing another Vietnam-type involvement, the United States Congress voted overwhelmingly to halt further covert U.S. aid to Angola's pro-Western forces.[22] The FNLA apparently used the remaining financial aid from the United States to buy arms and to recruit soldiers in Europe.

In many parts of the world, self-styled "soldiers of fortune" were making plans to participate in the struggle in Angola.[23] An English organization called "Security Advisory Services" was offering recruits a $300 advance and a salary of $300 a week to fight for UNITA and the FNLA.[24] The first batch of 25 left London for Zaire on January 18; a month later 128 more recruits departed.[25] The money to pay them reportedly came from bundles of crisp, consecutively numbered American $100 bills.[26] On February 6, eight Americans departed for Kinshasa.[27] After 4 days there, Holden Roberto himself led the Americans into Angola, from which stories had been filtering back that MPLA and Cuban forces had pushed the FNLA faction almost completely out of Angola.[28] By mid-February, 13 of the mercenaries had been captured while on patrol. Subsequently Dr. Neto announced triumphantly that the MPLA had won the Angolan civil war, following which the Soviet Union and 26 members of the

[19] Marcum, *id.* at 416.

[20] *Id.*

[21] *Id.* at 417; STRATEGIC SURVEY, *supra* note 3, at 32. The total number of troops may have been as high as 25,000 then, as it was in June, according to Jeremias Chitunda, UNITA Representative in the United States. N.Y. Times, Jun. 22, 1976, at 34, col. 3.

[22] Marcum, *id.* at 419; STRATEGIC SURVEY, *id.* at 32.

[23] *Mercenaries: 'A Bloody Shambles'*, TIME, Feb. 23, 1976, at 21-22.

[24] *The Mercenary Life*, NEWSWEEK, Feb. 9, 1976, at 30.

[25] *Id.*

[26] *Id.*

[27] American Guns for Hire, radio interview by Charles Cobb for National Public Radio, Aug. 2-4, 1976.

[28] *Id.*

Organization of African Unity extended recognition to the MPLA government.[29]

About 3 months later, the judicial process began. On May 26, 1976, one Irish, nine British and three American soldiers were indicted by the People's Revolutionary Court of Angola.[30] Simultaneously, the government of Angola headed by Dr. Neto called for an International Commission of Enquiry on Mercenaries (ICEM) to observe the trial and to make recommendations for international action to deal with the problem of mercenaries.[31] On June 5, Luis de Almeida, the Director of Information and Security of Angola, announced that the mercenaries were guilty, that the Angolan government had only to decide how much to punish them, and that British and American imperialism were really on trial, not the 13 mercenaries.[32] On June 7, the Angolan Minister of Justice, Diogenes Boavida, opened an exhibit in the Museum of Angola displaying war equipment, photographs of casualties and destruction, photographs of captured documents and other evidence (including captured American $100 bills), as well as filmed interviews with some of the mercenaries.[33] On June 9, tens of thousands of Angolans marched through Luanda carrying banners which demanded death for the mercenaries. There were no dissidents and no pleas for clemency from the government employees and MPLA militants, nor from the young school children who carried placards urging that the mercenaries be killed.[34]

The trial began on Friday, June 11, continued through the weekend, and was completed on the evening of the 16th. The semicircular courtroom for the trial was a newly renovated hall in the Chamber of Commerce Building. The trial was conducted in Portuguese, and there was simultaneous translation into English, French, Spanish and Russian. More than 100 foreign journalists were present in the upper balcony, and the trial was recorded officially on videotape. The Court was composed of five judges, two of whom are required to be graduates in law, and all of whom are appointed for 6 months.[35] The Attorney General of An-

[29] *An Easy Rout — and an Olive Branch*, TIME, Feb. 23, 1976, at 18.

[30] Indictment, *see* Appendix I *infra*.

[31] N.Y. Times, Jun. 6, 1976, at 13, col. 1.

[32] *Id.*; Christian Science Monitor, Jun. 8, 1976, at 3, col. 3.

[33] N.Y. Times, Jun. 9, 1976, at 7, col. 3.

[34] *Id.*, Jun. 10, 1976, at 9, col. 1.

[35] Article 4, LAW NO. 7/76 OF 1ST OF MAY [hereinafter cited as RULES OF PROCEDURE], *see* Appendix III *infra*.

gola, Ernesto Teixeira da Silva, was the Presiding Judge.[36] The other legally qualified judge was the Director of Angolan Television.[37] Two of the other judges were officers of FAPLA (the military arm of the MPLA) and the fifth judge was a member of the National Council of Women in Angola.[38]

Final prosecution arguments occurred on Thursday, June 17. Procurator Manuel Rui Alves Monteiro's 3-hour summation was greeted by applause from the court and the press gallery and by shouts of "death."[39] He called on the Court to "punish severely" the mercenaries as a warning against further mercenary attacks in southern Africa.[40] The next day, defense attorneys made their final arguments. Chief American counsel Robert Cesner, Jr., pleaded that the 13 mercenaries be treated as prisoners of war and argued that they could not be punished for an act which did not violate any law.[41] The court-appointed Angolan defense lawyers emphasized that the defendants were "tools of imperialist aggression."[42] The three British lawyers put the blame on the American and British governments for permitting the recruitment of mercenaries.[43] On Saturday, June 19, each of the mercenaries made closing statements.[44] Most denied committing any crimes and sorrowfully asked for leniency.

On June 28, the verdicts were announced.[45] Two Americans and seven British nationals were sentenced to prison terms ranging from 16 to 30 years. Three British nationals and one American were sentenced to die before a firing squad. There is no appeal from the People's Revolutionary Court,[46] but death sentences must be reviewed by President Neto.[47] Saying that the "practice

---

[36] George H. Lockwood, REPORT ON TRIAL OF MERCENARIES 7 (1976). Mr. Lockwood was a member of the International Commission of Enquiry on Mercenaries which was convened by the government of Angola. His observations of and comments upon the trial are set forth in his Report.

[37] *Id.*

[38] *Id.*

[39] N.Y. Times, Jun. 18, 1976, § 1, at 6, col. 4.

[40] *Id.*

[41] *Id.*, Jun. 19, at 7, col. 3.

[42] *Id.*

[43] *Id.*

[44] *Id.*, Jun. 20, 1976, at 8, col. 1; Christian Science Monitor, Jun. 21, 1976, at 3, col. 1.

[45] N.Y. Times, Jun. 29, 1976, at 1, col. 6.

[46] Article 27, RULES OF PROCEDURE, *supra* note 35.

[47] PRESIDENTIAL SERVICE ORDER OF 12TH OF SEPTEMBER 1970, *see* Appendix IV *infra*.

of mercenarism must be finished on this planet", he confirmed the death sentences on July 9.[48] The following day Callan, McKenzie, Barker and Gearhart were executed.[49]

PROCEDURAL ANALYSIS

Procedural Angolan law was inherited from the Portuguese civil law system used during colonial times. This system of civil or statutory law is characterized by specific legislative enactments, as well as executive administrative decrees and ordinances, treaties and protocols, all of which have been codified.[50] In this system, judges participate actively in the courtroom procedure, which is an inquisitorial process. The presumption is implicitly one of the accused's guilt, and the entire method is designed to determine the truth. Control of the proceedings is not conceded to the parties but rests instead with the presiding judge. The trial thus becomes the culmination of a long and thorough investigation by the court, rather than a contest between opposing counsels.

By way of contrast, common law is predominantly judge-made law, and the significant characteristic is the doctrine of precedent, by which the judges refer to previous decisions in order to adjudicate the case at issue. Common law trials are basically an adversary or accusatorial procedure, under which the accused is presumed innocent until proved guilty beyond a reasonable doubt. Among the safeguards for the accused under this philosophy of law are the privilege against self-incrimination, the right to cross-examine witnesses and the writ of *habeas corpus*. An important feature of the accusatorial procedure is that the judge is only an impartial arbiter between the litigating parties. Only rarely does the judge exercise discretion to intervene in the substantive questioning, and then only to avert grave injustice and not to advance the case for either side.

On November 11, 1975, the MPLA formed a government and adopted a constitution.[51] Subsequent legislation was enacted to enable the various governmental branches to discharge their functions. The prime example of this is Law No. 7/76 of May 1st, 1976 — "The Law Constituting the People's Revolutionary Court"

---

[48] N.Y. Times, Jul. 10, 1976, at 6, col. 4.

[49] *Id.*, Jul. 11, 1976, at 1, col. 5.

[50] For a general discussion of the two systems, *see* ABRAHAM, THE JUDICIAL PROCESS 12-17, 98-102 (1975).

[51] STRATEGIC SURVEY, *supra*, note 3, at 34; Marcum, *supra* note 3, at 417.

(hereinafter cited as the Rules of Procedure).[52] As authority for enacting this law, the Council of the Revolution cites Articles 32(e) and 38(a) of the Constitutional Law. These Articles deal, respectively, with the rights of the President to promulgate the laws of the Council of the Revolution, and of the Council to discharge legislative functions.[53] The law also mentions Article 44, which concerns the discharge of juridical functions and the organization, composition, and competence of the courts.[54] Article 3 of the Rules of Procedure states that the Court is competent to hear: (1) Crimes against the Angolan people, territory and government; (2) acts and activities which threaten the fundamental rights stipulated in the Constitutional Law; and (3) war crimes and crimes against humanity.[55]

Decree No. 3/75 of the 29th of November, 1975, authorizes the Directorate of Information and Security of Angola to prepare a "Case" for trial.[56] This is similar to the French *dossier* prepared by an examining magistrate (*juge d'instruction*) or to a grand jury indictment at common law. In essence, the process entails the discovery and presentation of all known facts concerning a possible violation of the law. Once prepared, the Case may be "filed away" and not acted upon either by the prosecutor or the Court or be submitted for trial. Action upon the Case depends on whether the Court or the Procurator (the equivalent of prosecutor) finds that the Case shows sufficient evidence of (1) a punishable offense, (2) the identity of the offenders, and (3) their responsibility.[57]

If the Case is accepted, the Procurator prepares and presents an Indictment to the Court. Article 10(c) of the Rules of Procedure specifies that the Indictment must indicate the laws and rules infringed.[58] The President of the Court may dismiss the Indictment, or accept it and issue a "Notice of Charges" and set the trial date. As provided under Article 12, the Notice of Charges incorporates the Indictment, identifies defense counsel for each defendant, and notifies the defendants of their procedural rights.[59]

---

[52] RULES OF PROCEDURE, *supra* note 35.

[53] CONSTITUTIONAL LAW OF THE PEOPLE'S REPUBLIC OF ANGOLA [hereinafter cited as CONSTITUTIONAL LAW], *see* Appendix V *infra*.

[54] *Id.*

[55] *Id.*

[56] Lockwood, *supra* note 36, at 9.

[57] *Id.*

[58] RULES OF PROCEDURE, *supra* note 35.

[59] *Id.*

The case proceeds to trial if, after the Court examines the file, it finds "that there is sufficient substantive evidence to show the criminal responsibility of the defendant."[60] This procedure under Article 11 is similar to a requirement under common law that an accused stand trial if there is probable cause to believe the accused committed the crime.

Members of ICEM, representing two different juridical systems — common law and civil law — identified seven universal principles guaranteeing respect for defendants' rights.[61]

a) *Right to know the charges* — Articles 10 and 12(a) of the Rules of Procedure mandate that the defendant be notified of the charges against him. The official Notice of Charges includes a brief statement of the punishable acts, the laws and rules allegedly violated and the corresponding penalties for those violations.

b) *Right to examine the case file* — Each defendant has the right, through his defense counsel, to consult the Case against him during a period of 8 days from the time each is notified of the charges.

c) *Right to confront one's accusers* — Article 23(2) of the Rules of Procedure allows the defendant to cross-examine prosecution witnesses.

d) *Right to be heard* — This right is guaranteed by Articles 20, 22(1) and (2), 24, and 25(1) of the Rules of Procedure.

e) *Right to present witnesses* — Each defendant may present his or her own witnesses, and the Court must hear the testimony of these witnesses, according to Articles 12(d) and 23(1) of the Rules of Procedure.

f) *Right to Counsel* — The Court is obliged to appoint an official defense counsel for each accused in the Notice of Charges. In addition, each defendant may substitute defense counsel of his own choice up to the day of the trial. These rights are guaranteed in Articles 12(b) and 13. During the actual trial of the mercenaries, in fact, the proceedings were postponed 3 days at the beginning to allow American defense attorneys, Cesner and Wilson, to prepare for the trial. Grillo chose to retain his Angolan counsel, while Acker and Gearhart substituted the American lawyers for their appointed defense. Again, when British barristers arrived on the third day of the trial, substitution of counsel was allowed. Only three British defendants substituted these for their Angolan law-

---

[60] *Id.*

[61] Declaration on the Compliance of Angolan Procedural Law with the Universal Principles Guaranteeing Respect for the Right to Defence, ICEM, [hereinafter cited as Declaration on Compliance], *see* Appendix VI *infra.*

yers. Presiding Judge Ernesto Teixeira da Silva announced that the Court agreed to permit the British lawyers to enter the trial late as "an act of generosity," and to give "every facility" to the defense.[62]

g) *Right to public trial* — Article 15(1) of the Rules of Procedure prescribes that the trial must be public.

In addition to these rights, Article 21 of the Rules of Procedure permits the defendants to remain silent at the trial. Not all witnesses need testify, and their testimony need not be believed. In fact, only ten of the 21 listed witnesses were called and one of those was dismissed for perjuring himself. The accused need only reply to the charges in a written statement of defense.[63]

The actual course of the trial was somewhat less structured than these formal guarantees of procedural due process. Events appeared to further the purpose of the inquisitorial system of justice, designed to "reveal the truth" as required by Articles 19 and 23 of the Rules of Procedure.[64] During the trial, defendants were not sworn, although witnesses were. The underlying assumption here seems to be that the extensive pre-trial investigation of the case obviates the need for all testimony at trial to be sworn. Defendants were questioned first by the Judges, then by the Procurator, and then by defense counsel. Hearsay evidence from witnesses was not excluded. Many of the flamboyant Procurator's statements were political, or hearsay, or leading questions which are prohibited by Article 22 of the Rules of Procedure.[65] This was not considered detrimental by the defense attorneys, who quickly learned to use leading questions also, eliciting simple responses from the witnesses and defendants. The attorneys used the same methods as the prosecution to explain the motives of their defendants and to illustrate the paucity of combat each had seen in Angola. Although many mercenaries testified against each other, the accused defendants were not present while their accusers were testifying. Once again, this seems peculiar to the inquisitorial system, rather than the adversary system. The onus is on the Court, on the one hand, to determine "the truth," and on the other hand, to preserve the procedural rights of the defendants. The ICEM, having attended and observed all sessions of the trial of the mercenaries before the People's Revolutionary

---

[62] N.Y. Times, Jun. 14, 1976, at 9, col. 1.

[63] RULES OF PROCEDURE, *supra* note 35.

[64] *Id.*

[65] *Id.*

Court, was satisfied that the trial was fair and was conducted with dignity and solemnity. It was further convinced that all rules of procedure were interpreted in favor of the defendants.[66]

THE INDICTMENT

On May 26, 1976, Procurator Monteiro submitted to the People's Revolutionary Court a 33-page Indictment, which had been prepared by the Directorate of Information and Security of Angola, in accordance with Decree No. 3/75 of November 20, 1975. This was duly accepted by the Court, which issued a Notice of Charges and scheduled the trial for June 8, 1976.

First, the Indictment (for text see Appendix I) charged all 13 defendants generally with the crime of being mercenaries,[67] in violation of two Organization of African Unity Resolutions — AHG/Res. 49 (IV), of September 11-14, 1967, in Kinshasa, Congo, and CM/St. 6 (XVII) of June 21-23, 1971, in Addis Ababa, Ethiopia; and four United Nations Resolutions — 2395 (XXIII),[68] 2465 (XXIII),[69] 2548 (XXIV)[70] and 3103 (XXVII).[71]

Second, all the defendants were charged with crimes against peace, in violation of the Statute of the Nürnberg International Military Tribunal,[72] confirmed by United Nations Resolution 95(1) of December 11, 1946.[73] Without specifying where, the Indictment states that these crimes are also cited in current Angolan law.

Third, all the defendants are accused of "murders, maltreatment, insults and harassment of members of the civilian population; murder of MPLA members; of other mercenaries and of other FNLA soldiers; kidnapping of civilians and stealing of their property . . ."[74] No provisions of the Revolutionary Penal Code are cited as being violated.

---

[66] Declaration on Compliance, *supra* note 60.

[67] Indictment, *supra* note 30, at Introduction and para. 134.

[68] G.A. RES. 2395, 23 U.N. GAOR, Supp. 18, at 59, U.N. Doc. A/7218 (1968).

[69] G.A. RES. 2465, 23 U.N. GAOR, Supp. 18, at 5, U.N. Doc. A/7218 (1968).

[70] G.A. RES. 2548, 24 U.N. GAOR, Supp. 30, at 5, U.N. Doc. A/7630 (1969).

[71] G.A. RES. 3103, 28 U.N. GAOR, Supp. 30, at 142, U.N. Doc. A/9030 (1973).

[72] Indictment, *supra* note 30, at Introduction and para. 136.

[73] G.A. RES. 95(1), 1 GAOR, Pt. II (1946).

[74] Indictment, *supra* note 30, at para. 138.

Last, the Indictment charged each defendant separately, again without mentioning specific Code violations. The alleged crimes of Costas Georgiou, alias "Tony Callan," included the murders of civilians, FAPLA soldiers, and other mercenaries. The defendant McKenzie was charged with stealing and destruction of military and civilian equipment and property, with maltreatment and kidnapping of civilians and with assisting Callan in murdering 13 British mercenaries on February 1, 1976, who wanted to return home to England against his wishes. The defendants McIntyre, Marchant, Evans and Wiseman were charged with being members of Callan's contingent, known as "Killer Group," and with killing FAPLA soldiers in combat on the first and third of February. The other Britons — Lawlor, Fortuin, Barker and Nammock — and the three Americans — Grillo, Gearhart and Acker — were accused generally of participating in armed actions against FAPLA forces. Gearhart alone was specifically charged with soliciting his role as a mercenary by placing an advertisement in *Soldier of Fortune* magazine.[75]

The Court also took note of "the stable and organized groups" whose members "were all conscious" that the group "had been constituted to commit crimes within the borders of the People's Republic of Angola."[76] Although the Indictment did not specifically accuse the defendants of criminal conspiracy, the Verdict (for text see Appendix II) found that the defendants had formed a conspiracy in violation of Article 263 of the Revolutionary Penal Code. As noted previously, Article 10 (c) of the Procedural Code specifies that the Indictment must indicate the laws and rules infringed. The Indictment does not mention Article 263, nor does it appear in the public consolidation of the Revolutionary Penal Code made available to the defense attorneys and to the ICEM.

As proof of the charges the Indictment lists: a) Confessions of the defendants, b) 21 witnesses, and c) reports from psychiatric, clinical and forensic doctors.[77] In addition, at the end of the oral evidence at trial, the Procurator presented a film showing an

---

[75] SOLDIER OF FORTUNE, Spring, 1976, at 75, col. 2. The advertisement reads: "WANTED: EMPLOYMENT AS MERCENARY on Full-Time or Job Contract basis. Preferably in South or Central America, but anywhere in the world, if you pay transportation. Contact Gearhart, Box 1457, Wheaton, MD 20902." These 33 words, at $.20 per word, may ultimately have cost Gearhart his life.

[76] Indictment, *supra* note 30, at Conclusion para. 1.

[77] *Id.* at para. 140.

interview with U.S. President Ford, interspersed with scenes of military troops and equipment in Angola, mass graves, and local destruction. This is reminiscent of the captured Nazi films shown by the Prosecution in some of the Nürnberg war crimes trials.

The Indictment demands that the defendants be punished for these crimes under the MPLA Combatants Disciplinary Law of July 10, 1966 (for text see Appendix IV). The death penalty is also sought, under the authority of Presidential Service Order of September 12, 1970, signed by Dr. Neto (for text see Appendix IV). It is claimed that these are incorporated in Angolan law by virtue of Article 58 of the Angolan Constitutional Law, which states that laws and regulations in force on Independence Day (November 11, 1975) shall be valid unless repealed or amended and so long as they do not conflict with the spirit of the current law.[78]

The Combatants Disciplinary Law was designed for and used by the MPLA forces during the long civil war. It lists offenses, rewards, penalties and decorations for MPLA soldiers. There are nine categories of offenses, ranging from "offenses against the dignity of the struggle" to "offence with regard to laws, authorities, and people."[79]

Among the categories of penalities are severe imprisonment and the death penalty. Severe imprisonment is available for "Everyone and deserters or disarmed enemies." The death penalty is reserved exclusively for "Everyone and enemies."[80] The Court imposed the death sentence on four of the mercenaries because, among other reasons, "mercenaries are uncontestably enemies."[81]

SUBSTANTIVE ANALYSIS

The procedural fairness accorded to the defendants has been examined already. The substantive fairness of the proceedings will now be considered. There are several key questions: Was a crime committed by the defendants? If so, what law was violated? Was the source of the law a domestic civil code, or a recognized principle of international law, or a treaty or convention ratified by a number of States? If the activity is considered uni-

---

[78] CONSTITUTIONAL LAW, *supra* note 53.

[79] COMBATANTS DISCIPLINARY LAW OF 10TH OF JULY 1966, *see* Appendix IV *infra*.

[80] *Id.*

[81] Verdict, *see* Appendix II *infra*, at para. 65.

versally abhorrent to the conscience of world nations, is it immaterial whether such an offense has been codified in penal law or reduced to treaty form?[82] What follows here is a discussion of these aspects of the judicial process at the Angola trial. Ultimately it is a search for precedent, if not in the common-law sense of prior judicial decisions, then at least in the literal sense of a similar event.

Intertwined in this discussion is the unique problem of the status of the mercenaries. First of all, were the defendants mercenaries, and if so by what definition? Assuming that they were, and further assuming *arguendo* that they committed some crime or crimes, should their status as mercenaries exempt them from prosecution, or alter their treatment? In terms of its legacy to the laws of war, this trial may be remembered less for what was done than for how it was done. This trial is a continuation of the process of developing the laws of war, on the one hand. On the other hand, viewed more provincially, it is only a domestic trial of locally-situated criminals.

As indicated previously, there were four categories of offenses and several sources of law mentioned in the Indictment:[83]

ALLEGED OFFENSE	*ALLEGED SOURCE*
1. Being a mercenary	—2 OAU Resolutions
	—4 U.N. Resolutions
2. Crimes against peace	—Nürnberg Charter
3. Murder, robbery, destruction of property	—Angolan Revolutionary Penal Code
4. Conspiracy	—Angolan Revolutionary Penal Code

The next section deals separately with domestic Angolan law, the Nürnberg Charter and international law as sources.

ANGOLAN LAW

The Angola trial was not the first public trial of a white mercenary in Africa. That historic distinction belongs to the trial of Rolf Steiner by the government of the Sudan in August 1971.[84]

[82] According to one commentator, one cannot be punished unjustly under the terms of international law if the principle or law is recognized by most states and is not subject to quick mutation. *See* J. APPLEMAN, MILITARY TRIBUNALS AND INTERNATIONAL CRIMES 48 (1954).

[83] Indictment, *supra* note 30.

[84] *See In the Trial of F. E. Steiner — A Court Martial*, SUDAN LAW JOURNAL AND REPORTS 147 *et seq.* (1971).

In putting the German-born soldier on trial for waging war against the Sudan, the government staged what it termed "the Nuremberg trial of Africa."[85] There were other parallels with the Angola trial as well. The six-man military tribunal heard prosecutor Sayed Khalafalla el Rashid condemn the mercenaries' ruthless activity as an international crime plaguing the Third World.[86] Steiner denied he was a mercenary, depicting himself as an idealist who had sought to help the southern Sudan's oppressed blacks free themselves from the domination of the Arab north.[87] In his "confession" he admitted his role in the Anyanya rebellion and implicated a host of governments and agencies.[88]

In a lengthy summation to the Khartoum People's Court, Judge-Advocate Dafalla el Radi Siddig reviewed the Court's jurisdiction, the accused's presence within the Court's power, and the criminal laws allegedly violated by Steiner.[89] Unlike the People's Revolutionary Court in Luanda, however, this court charged Steiner only with violations of domestic law. Specifically, the court cited Section 98 of the Sudan Penal Code, which "seeks to punish whoever collects arms, men or ammunition or otherwise prepares to wage war against the Sudan Government."[90] Other alleged crimes included violations of Section 7 of Republican Order IV,[91] Section 21 of Republican Order IV,[92] and Section 203 of the Customs Ordinance.[93] Recognizing that Steiner's acts by their nature constituted a political crime, the court sought to define the violation more precisely. The court then rejected international law as a potential source because there

---

[85] *SUDAN: Africa's 'Nuremberg Trial'*, NEWSWEEK, Sept. 6, 1971, at 31.

[86] *Id.*

[87] *Id.* Steiner's first military experience had been with a branch of the Hitler Youth movement known as the Nazi "Wolf Cubs." Later he saw action with the French Foreign Legion and in Korea, Indochina, the Middle East, Algeria and Biafra, where he considered himself an armed missionary bringing salvation to the natives. *The Armed Missionary*, TIME, Nov. 22, 1971, at 53.

[88] TIME, *supra* note 87. Among those mentioned were the Central Intelligence Agency, Peace Corps, British Intelligence, the Roman Catholic Church, Israel, Ethiopia and Uganda. *Id.*

[89] SUDAN LAW JOURNAL AND REPORTS, *supra* note 84.

[90] *Id.* at 155.

[91] *Id.* at 154-155. Republican Order IV concerns acts which are likely to prejudice the unity or peace of the Sudan, and Section 7 deals with efforts to obtain assistance from other States in working to overthrow the Sudan.

[92] *Id.* at 157. Section 21 prohibits "injurious falsehood" directed against the government of the Sudan.

[93] *Id.* Defense counsel argued that the drugs were used for treating lepers and others.

was no "unequivocal and uniform yard-stick [sic] as to what is and what is not a political offense to make it a rule of international law."[94] Finally, the Judge-Advocate exhorted the court that:

> the sections of the law under which the accused is being tried all start with the word whosoever which could mean a mercenary or any body [sic] else. Your concern would be to look into the deeds of the accused and the interests of the society safeguarded by law which these deeds threaten. It is the gravity or no gravity of such acts which should motivate you to mitigate punishment or otherwise.[95]

Ultimately the Court found Rolf Steiner guilty and sentenced him to death, but President Jaafar Numeiry immediately commuted the sentence to 20 years imprisonment.[96]

No provision of the Angolan Constitution, or of the Rules of Procedure, or of the 1966 MPLA Combatants Code specifically prohibits crimes against peace or the crime of being a mercenary. The Revolutionary Penal Code presumably forbids murder, robbery, assault and the like, as well as conspiracy, but it must remain only a presumption since specific Code sections are not cited and Section 263, which is cited, is not publically available. The Combatants Code, on its face, applies to the pre-independence MPLA armed forces and not to the general population. One can argue that all laws existing in Angola on Independence Day were assumed by the new MPLA government. This would accord with accepted custom and practice among States in the international community. In fact, Article 58 of the Constitutional Law does incorporate "laws and regulations at present in force . . ."[97] Even if the Code is currently valid, however, the language still refers only to Angolan combatants and not to citizens or even to mercenaries. Finally the Code does not mention in any way the crimes alleged in the Indictment. It is a recognized principle of international law that presence within the territory of a State gives the State jurisdiction to legislate and to enforce its own laws upon those within its borders. This was not the reasoning of the Court here, at least not explicitly.

As for the Constitutional Law, Article 17 speaks to certain fundamental rights and duties of citizens of the People's Re-

---

[94] *Id.* at 152.

[95] *Id.* at 172.

[96] TIME, *supra* note 87.

[97] CONSTITUTIONAL LAW, *supra* note 53.

public of Angola.[98] Article 17 disallows the installation of foreign military bases within the territory;[99] presumably this applies to Cuban forces as well as to UNITA and the FNLA. Article 23 ensures that citizens shall be brought to trial only under the terms of the law.[100] Taken as a whole, the Constitutional Law appears to apply only to the citizens of the State, although a foreign State could protest if its nationals were not being accorded the same treatment as citizens of the first State. According to the Constitutional Law itself, legislative functions are to be discharged by the Council of the Revolution in the spirit of that document.[101] The Council could and perhaps should have enacted specific legislation dealing with crimes against peace and crimes of mercenarism, in order to punish that activity.

The Rules of Procedure purport to create a Court competent to hear certain crimes and to establish procedural norms which will govern its function.[102] None of the Articles purports to legislate criminal or civil statutes. Article 3 only establishes the Court's competence to judge certain crimes, noted earlier.[103] Some other law must establish the behavior as criminal, since this is only a procedural statute. Assuming *arguendo* that Law No. 7/76 of the 1st of May did proscribe mercenarism and crimes against peace, this law was enacted 10 or more weeks *after* the defendants were captured. At the time of their arrests, the defendants had not violated existing Angolan law except arguably laws forbidding illegal entry, kidnapping, murder, and robbery. Callan and McKenzie were the only two charged with murder. None of the others was even charged with these crimes. They were indicted for certain characteristic military behavior, such as ambushes, destruction of property, killing soldiers in combat and participating in armed actions against FAPLA forces.[104] The defendants were not innocent bystanders in the conflagration. From a purely legal viewpoint, though, they were not specifically charged with committing some crimes and they violated no specific laws concerning other crimes. What the People's Revolutionary Court could have tried and convicted the defendants for is a matter

---

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.* at art. 38(a).

[102] RULES OF PROCEDURE, *supra* note 35.

[103] *Id.*

[104] Indictment, *supra* note 30, at para. 15.

of conjecture. The consequence of the failure to provide domestic legislation to proscribe activity later deemed to be criminal is a denial of substantive due process. The Court becomes the ultimate arbiter of what constitutes a crime, not the legislative body. Potential transgressors have no advance notice of what acts are punishable and courts are at liberty to dispense *ad hoc* justice arbitrarily. The *ex post facto* nature of Law No. 7/76 renders it invalid as a statutory prohibition of any acts committed by the defendants.

INTERNATIONAL LAW

As examples of international law, the People's Revolutionary Court cited the Charter of the Nürnberg Military Tribunal[105] and Resolutions of the United Nations[106] and of the Organization of African Unity.[107] The Charter was used as support for the charge of crimes against peace leveled against all the mercenaries, while the Resolutions were used to document the crime of mercenarism. For obvious support value, it is apparent why the Court used these documents. What remains unclear is why this domestic court bothered at all with international declarations of questionable relevance to its own proceedings. The following sections will attempt to find the answer, which in turn will depend on the relevance of another issue — the status of mercenaries under international law. The discussion is not meant to be exhaustive on this latter topic, but claims only to be an overview of a vague and complicated province of international law.

STATUS OF MERCENARIES

Any discussion of mercenarism, particularly in the context of its being a crime, is confused by the difficulty of defining precisely what a mercenary is. To some the term conjures up the romantic image of a "soldier of fortune" while to others the term causes revulsion. Is a mercenary a tribesman fighting with another tribe, or an idealistic youth who joined the International Brigade in Spain; or is he a member of the Pope's Swiss Guard at the Vatican? Is mercenarism restricted only to military activity, as opposed to that of a political, religious or philosophical nature? In his history of mercenaries, Anthony Mockler con-

---

[105] *Id.* at para. 136.

[106] *Id.* at para. 134.

[107] *Id.*

cludes that it is not enough to base the definition either on status or motive, or even on a combination of the two. The real mark of the mercenary, he says, is "a devotion to war for its own sake."[108] This definition, elegant in its simplicity, seems to apply to the legendary Colonel Mike Hoare's "Wild Geese" and his Five Commando, which fought in the Congo rebellion during the 1960's. It is rumored that they killed Patrice Lumumba, and that they can assemble a small professional army of 200-300 men within 72 hours even today.[109] Does that definition apply also to Daniel Gearhart, who never fired a single shot during 4 days in Angola but who hired himself out as a mercenary?

Although the court in the Steiner case did not bother with such a trifling matter as the definition of a mercenary because the law was all-inclusive, the Angolan court labored over the problem in its verdict. One section states that mercenarism "was not unknown in traditional penal law, where it was always dealt with in relation to homicide."[110] This reference is to paid assassination, of course, to the hired killer.

Later the verdict states that in modern penal law, as well as in comparative law, "the mercenary crimes lost all autonomous existence and was seen as a common crime, . . . aggravated by the profit motive . . . ."[111] The verdict begins by considering mercenarism an international crime, over which courts of every State would have jurisdiction according to the principle of universality. The section ends by saying mercenarism has again become a common crime, one that is specifically "provided for in Article 20 No. 4 of the Penal Code in force."[112] Unfortunately for the defendants, this law was not cited in the Indictment, nor was it made available to the defense attorneys or to the ICEM. Undaunted the Court declared, "This annuls the objection of the defense that the crime of mercenarism has not been defined and that there is no penalty for it."[113] The Court seems to consider that mercenarism is an agglomeration of specific common crimes like murder, rape, larceny or wanton destruction, rather than a unique crime separately punishable. If that is the proper understanding then only Callan and McKenzie were properly

---

[108] *See* A. MOCKLER, THE MERCENARIES 13-24 (1970).

[109] NEWSWEEK, *supra* note 24, at 31.

[110] Verdict, *supra* note 81, at para. 46.

[111] *Id.* at para. 53.

[112] *Id.* at para. 54.

[113] *Id.* at para. 55.

convicted, because such common crimes were alleged only against these two. The others also were charged with mercenarism but committed none of those crimes and thus were not justly convicted.

The ICEM also evolved a definition of mercenarism. The Commissioners declared that "new forms . . . are continually being created in response to new needs to repress workers' struggles or movements for national independence throughout the world."[114] In its Luanda Convention on the prevention of mercenarism,[115] the ICEM attempted to codify international rules in a single text. Article One lists the ICEM proposals for elements of the crime of mercenarism:

a) any individual, group or state
b) in armed opposition to self-determination
c) which
   1. organizes, finances, trains, employs, supports a military force of non-nationals to act for personal gain, or
   2. enlists in such a force, or
   3. allows such activity in its territory.[116]

The Draft Convention denies mercenaries the protection of prisoner of war status and exhorts contracting parties to enact domestic legislation to implement these provisions.

These various "definitions" are no more than attempts to apply static labels to a dynamic area of the laws of war. Two basic issues suggest themselves in this regard. First, what distinguishes the types of conflict in which mercenaries are engaged? Second, what rights and responsibilities are placed upon mercenaries in each type of conflict?

As will be seen, the rights and obligations of mercenaries do not depend upon whether the conflict in which they participate is declared or undeclared. The 1949 Geneva Conventions apply not only to declared war but also to "any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them."[117]

---

[114] Declaration of Luanda, 10th June 1976, ICEM, *see* Appendix VII *infra*.

[115] Draft Convention on the Prevention and Suppression of Mercenarism, ICEM, *see* Appendix VIII *infra*.

[116] *Id.* at art. One.

[117] Article 2, from which this statement is drawn, is common to all four Conventions. *See* Geneva Convention For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, [1956] 6 U.S.T. 3114, T.I.A.S. No. 3362; Geneva Convention for the Amerlioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, [1956] 6 U.S.T. 3217, T.I.A.S. No. 3363; Geneva Convention Releative to the Treatment of Prisoners of War, Aug. 12, 1949, [1956] 6

Noted commentator Richard Falk has pointed out that "warfare *between* states now most frequently takes place *within* a single national society . . . Significant multinational participation transforms an internal war into a species of international law."[118] This assertion is the basis of his argument that the traditional criteria for distinguishing international from national conflicts are inadequate for modern needs. He further contends that now it is essential that substantial participation in the internal war by private or public groups external to the society experiencing violence serve as a basis for internationalizing civil strife.[119] Universal acceptance of this idea would undoubtedly help to bring international law into closer touch with the realities of world politics.

Already there is a steady pressure both within and without the United Nations General Assembly for an extension of combatant status to include new forms and classes and to exclude others. In the context of guerrilla warfare, Draper indicates there is pressure to remove the distinction as to lawful status as combatants for those engaged in international and non-international conflicts.[120] This is one of the main areas of confrontation, he believes, in which the future shape of a crucial part of the law of war will have to be resolved by governments. Draper sees two trends in the legitimation process:

> First, the accepted view that common criminals who resort to armed force to achieve their ends, are to be excluded from any attribution of lawful combatancy. Second, we are seeing a widening of the idea of a political struggle carried out by armed force being within the control of the existing law of war. This has the corollary that those who participate in such a struggle, whether openly or clandestinely and sporadically, should be treated as lawful combatants entitled to the full status of prisoners of war upon capture.[121]

U.S.T. 3316, T.I.A.S. No. 3364; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, [1956] 6 U.S.T. 3516, T.I.A.S. No. 3365.

[118] Falk, *The International Law of Internal War*, in INTERNATIONAL ASPECTS OF CIVIL STRIFE 218 (J. Rosenau ed. 1964).

[119] *Id.* at 223.

[120] Draper, *The Status of Combatants and the Question of Guerrilla Warfare*, 45 BRIT. Y. B. INT'L L. 173, 184 (1971) [hereinafter cited as Draper]. For a discussion of the rules of warfare as they relate to guerrilla warfare and revolutionary war, especially those rules dealing with the status and treatment of captured combatants, *see* King, *Revolutionary War, Guerrilla Warfare, and International Law*, 4 CASE W. RES. J. INT'L L. 91 *et seq.* (1972).

[121] *Id.*

The International Committee of the Red Cross reached a similar conclusion. Its report noted that when there is foreign military intervention on the insurgents' side, "there would seem no doubt that the laws and customs [of war] should be applied as a whole to the conflict, which thus becomes of an international nature."[122] It is unclear whether "intervention" includes troops, arms or supplies and how substantial such assistance would have to be.

For the purpose of determining the general status of mercenaries under the customary international laws of war, one can refer to Article 1 of the Hague Resolutions of 1907[123] and to Article 4A(1) and (2) of the 1949 Geneva Prisoners of War Convention.[124] The latter incorporates and extends the classification of prisoner of war while preserving the four basic conditions of the Hague Resolutions. This status is far from clear, but to qualify as a lawful combatant, a mercenary would have to meet the following conditions:[125]

(1) He must be a member of an "organized" group — armed forces, militia, volunteer corps, organized resistance movement.

(2) He must belong to "a Party to the conflict" — even if there is an organized group with its own commander, the members will not have combatant status if it lacks the necessary connection with a Party to the conflict.

(3) He must be "commanded by a person responsible for his subordinates" — the commander must have an acknowledged position of authority such that the conditions required for lawful combatancy may be secured in practice.

(4) He must have a "fixed distinctive sign recognizable at a distance" — the test normally accepted is that the individual must be permanently marked so that he is distinguish-

---

[122] REPORT OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS: REAFFIRMATION AND DEVELOPMENT OF THE LAWS AND CUSTOMS APPLICABLE IN ARMED CONFLICTS, 21ST INTERNATIONAL CONFERENCE OF THE RED CROSS 100 (1969).

[123] Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907; [1910] 36 STAT. 2277, 2295; *see also* FRIEDMAN, THE LAW OF WAR 308, 313 (1972), and SCHINDLER AND TOMAN, THE LAWS OF ARMED CONFLICTS 57 *et seq.* (1973).

[124] Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 117.

[125] *Id. See also* Mallison and Mallison, *The Juridical Status of Irregular Combatants Under the International Humanitarian Law of Armed Conflict*, 9 CASE W. RES. J. INT'L L. (1977).

able from an ordinary peaceful civilian at a distance at which weapons can be used by or on them.

(5) He must carry arms "openly" — this is similar to (4) in scope and difficulty of enforcement.

(6) He must conduct operations "in accordance with the laws and customs of war" — this means unacceptable behavior, such as murdering or torturing prisoners.

With the possible exception of (6) above, these conditions apply to the Angolan defendants. Solicited, greeted and escorted by Holden Roberto, they entered Angola armed and in uniform.[126] It was clear that Callan was the field commander, and at the trial he accepted responsibility for their actions. By and large, they observed the laws and customs of war, although the execution of 13 homesick Britons by Callan and McKenzie might arguably violate that condition. In any event, Article 5 of the Prisoners of War Convention provides: "Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."[127] Furthermore, if an incumbent government shows little mercy in its conduct toward captured rebels, it can most assuredly anticipate like treatment in the event the rebels are ultimately victorious. Since the outcome of internal revolutionary wars is seldom certain, it is to every party's advantage to act in accord with these general humanitarian principles.

NÜRNBERG CHARTER

It has long been established in customary international law that a belligerent has authority to try and to punish individuals for crimes which constitute violations of the laws and customs of war, as well as the laws of humanity, when such persons fall within its power.[128] The mercenaries having been brought within its jurisdiction, the People's Revolutionary Court sought out international laws by which to try and to punish these defendants. As the source of its charge of crimes against peace, the Court noted the

---

[126] Indictment, *supra* note 30.

[127] Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 117.

[128] Finch, *The Nuremberg Trial and International Law*, 41 AM. J. INT'L L. 20, 21 (1947). *See also* Biddle, *The Nuremberg Trial*, 33 VA. L. REV. 679 *et seq.* (1947).

Charter of the Nürnberg Military Tribunal.[129] As the source of the charge of mercenarism, the Court selected certain U.N. and OAU Resolutions.[130] This section concerns the use of the Nürnberg Charter as authority in the trial of the mercenaries.

On August 8, 1945, representatives of the United States, France, Great Britain and the Soviet Union signed an agreement to establish an International Military Tribunal for the trial of war criminals whose offenses had no particular geographical location.[131] Annexed to and forming an integral part of this Agreement was the Charter of the International Military Tribunal, which constituted the Court and its jurisdiction, detailed the nature of particular crimes, and set out procedural rules to ensure fair trials for the defendants.[132] Indictment Number One consisted of the following four Counts:

Count One: The common plan or conspiracy;

Count Two: Crimes against peace;

Count Three: War crimes;

Count Four: Crimes against humanity.[133]

Article 6 of the Charter distinguishes between two categories of crimes against peace which are reflected in the Indictment as Courts One and Two. Crimes against peace are defined as "planning, preparation, initiating or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing. . . ."[134] The Charter does not define the term "aggressive war." The determination of the Court as to the existence of aggressive war was founded on an elaborate historical review of the events before and during the war

---

[129] Indictment, *supra* note 30, at para. 136.

[130] Indictment, *supra* note 30, at para. 134;

[131] Agreement by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis, 1 NAZI CONSPIRACY AND AGGRESSION 1 (1946).

[132] *Id.* at 4-11.

[133] *Id.* at 13-56.

[134] *Id.* at 5. Although not cited by the Angolan Court, Article 6 also defines two other categories of crimes. War Crimes are violations of the laws or customs of war, such as murder, plunder of public or private property, wanton destruction of cities or devastation not justified by military necessity. Crimes against Humanity are defined as murder, extermination, enslavement, or persecution on political, racial or religious grounds.

period and was a result of its evaluation of these facts.[135] It is clear that not every attack or invasion by armed forces was considered as a war of aggression.[136] The count of conspiracy was interpreted strictly by the Court as the significant contribution, with knowledge of its purpose, to the elaboration of a concrete plan to wage war.[137] The distinctive feature of the second Count was that the crimes against peace be connected with particular wars of aggression, as opposed to a general policy of aggressive wars as in Count One. Here the Court adopted the principle that only acts of warfare constituting a *waging* of criminal war are crimes against peace.[138] These acts were considered criminal only inasmuch as they were undertaken by military and administrative officials in highly influential positions.[139] The Court did not adopt the extreme theory that every act of warfare committed in the prosecution of a criminal war is an international crime.[140]

By comparison with the Nürnberg Tribunal, the People's Revolutionary Court of Angola cast a paltry shadow. Whereas the Tribunal was an international court established by international agreement, the People's Revolutionary Court was a domestic tribunal established by domestic law. The Nürnberg Charter constituted a court (whose members all were legally qualified) which defined the procedural rules and established the specific substantive law to be applied. The Rules of Procedure, by contrast, set up a Court requiring that only two members be legally qualified and they established the jurisdiction of the Court over certain generalized crimes not covered by domestic statutory law. The Nürnberg Tribunal indicted the military and administrative leaders of the Third Reich, while the Angola court charged only ordinary combat soldiers, the titular leader of whom (Callan) was not a field commander in the sense of the Charter. These mercenaries arguably could have been convicted of war crimes for

---

[135] The Charter and Judgment of the Nurnberg Tribunal: History and Analysis, Memorandum submitted by United Nations Secretary-General 47-48 (1949).

[136] *Id.* at 49.

[137] *Id.* at 53.

[138] *Id.* at 61.

[139] *Id.* at 58-60. Thus Admiral Doenitz was expressly convicted of waging war, for his role as Commander in Chief of the Navy and previously as leader of the submarine force. The civilian Seyss-Inquart was found guilty also, for governing territory which was of vital importance in the aggressive war being waged by Germany. But Albert Speer's role as director of the armament industry was not considered to be waging war.

[140] *Id.*

violations of the laws and customs of war not justified by military necessity. Not even Holden Roberto or Jonas Savimbi, the declared leaders of the FNLA and UNITA, respectively, were indicted, if only *in absentia*. On the other hand, the leaders of the American and British governments, as well as their intelligence agencies, were implicated by innuendo.

These oversights notwithstanding, the People's Revolutionary Court should be judged perhaps in the light of the opening statement by Justice Robert H. Jackson, the Chief U.S. Prosecutor at the Nürnberg trial:

> The real complaining party at your bar is Civilization . . . [It] asks whether law is so laggard as to be utterly helpless to deal with crimes of this magnitude by criminals of this order of importance. It does not expect that you can make war impossible. It does expect that your juridical action will put the forces of International Law, its precepts, its prohibitions and, most of all, its sanctions, on the side of peace, so that men and women of good will, in all countries, may have "leave to live by no man's leave, underneath the law."[141]

The spirit of this eloquent statement calls for the punishment of individuals who had brought civilization nearly to the brink of disaster, while it permits those same individuals the privilege of defending themselves and asserting their innocence. Jackson's view of the trial expresses both the culmination of modern ideals of culture, tolerance and justice, as well as the need to vindicate the rights of those oppressed and persecuted. His challenge to the Tribunal was that the spirit and the letter of the law be applied so that justice might not be denied either to the victors or to the vanquished. Viewed in this light, the Angola mercenaries trial becomes an attempt to prevent the spread of mercenarism throughout Black Africa, to rid the continent of an unwelcome plague, and by this judicial act to throw off the shackles of colonialism.

The People's Revolutionary Court would have been well advised to heed the comments of another participant in the war crimes trials. Judge Radhabinod Pal of India was a member of the Inter-National Military Tribunal for the Far East, commonly known as the Tokyo War Crimes Trial. In his dissenting opinion to the Judgment, he indicted the Western policies of exploitation as the basis of World War II and thereby anticipated the anti-colonial mood which flourished in the post-war period.

> The so-called trial held according to the definition of crime now given by the victors obliterates the centuries of civilization

[141] NAZI CONSPIRACY AND AGGRESSION, *supra* note 129, at 173.

> which stretch between us and the summary slaying of the defeated in a war. A trial with law thus prescribed will only be a sham employment of legal process for the satisfaction of a thirst for revenge. It does not correspond to any sense of justice. Such a trial may justly create the feeling that the setting up of a tribunal like the present is much more a political than a legal affair, an essentially political objective having thus been cloaked by a judicial appearance. Formalized vengeance can bring only an ephemeral satisfaction, with every probability of ultimate regret; but vindication of law through genuine legal process alone may contribute substantially to the "re-establishment of order and decency in international relations . . ."
>
> . . . In my judgment, therefore, it is beyond the competence of any victor nation to go beyond the rules of international law as they exist, give new definitions of crimes and then punish the prisoners for having committed offenses according to this new definition.[142]

Viewed in the light of Judge Pal's remarks, the Revolutionary People's Court exceeded the scope of its charter and succeeded only in conducting a political harangue. The results may not have been any different had the trial been more closely tailored to specific definitions of particular acts deemed offensive by the Court. As only the second trial of white mercenaries by an African nation, the trial certainly had significant political overtones, enhanced even more by the inflammatory rhetoric accompanying it. Having endured the participation by white mercenaries in their struggles for independence, Black African countries were ripe to make an example of them. Then too, the MPLA sought further means of legitimizing itself as the official government of the newly created People's Republic of Angola. A public war crimes trial could be the vehicle by which the MPLA proclaimed its supremacy to the world and to the Angolan people themselves. The political circumstances of the trial thus were inescapable.[143] The fact remains, however, that the purpose of a trial is to render justice. Any other purpose — such as providing political fodder or recording events for posterity — detracts from the main businesses of the law: To weigh the charges fairly, to render judgment and then to carry out just punishment where necessary.

---

[142] Dissenting Opinion of Judge Pal, *reported in* FALK, KOLKO AND LIFTON, CRIMES OF War 124-125 (1971).

[143] *Soldiers of Misfortune*, NEWSWEEK, Jun. 21, 1976, at 42. Justice minister Diogenes Boavida declared that "it is not these criminals who will be on trial, but imperialism." Angolan Information Minister Luis de Almeida pronounced: "There is no doubt in the Angolan Government's mind that they are guilty."

[144] WYZANSKI, WHEREAS — A JUDGE'S PREMISES 175 (1965).

Judge Charles E. Wyzanski, Jr., has stated the same thought in fewer words: ". . . [T]o regard a trial as a propaganda device is to debase justice."[144]

RESOLUTIONS OF THE UNITED NATIONS AND OF THE ORGANIZATION OF AFRICAN UNITY

As its final source of law condemning the crime of mercenarism, the People's Revolutionary Court cited several Resolutions of the United Nations and of the OAU. The new People's Republic of Angola has been recognized by the OAU,[145] but it is not a member of the U.N. Moreover, these resolutions do not have the binding force of law, even on member nations, unless the members specifically agree to be so bound. The resolutions merely call on member States to enact legislation into their own penal codes which prohibits the crime of mercenarism. Since the Council of the Revolution passed no such statute which manifested an intent, express or otherwise, to incorporate this crime into current Angolan law, there could have been no such crime at the time the defendants were captured. The Geneva-based International Commission of Jurists has noted that mercenarism should be but is not yet a crime in international law.[146] These resolutions do represent a current trend to condemn the activity of mercenaries. Many States are recognizing mercenarism — like murder, piracy, genocide — as a universal crime, one which so offends traditional and universal notions of justice, human decency and proper conduct that all States may exercise legislative and enforcement jurisdiction over violators.

Specifically, U.N. Resolution 2395[147] calls for measures to prevent the recruitment or training of mercenaries in Portuguese colonies. Resolution 2465,[148] adopted in the same year (1968), declares that using mercenaries against movements for national liberation is punishable, that mercenaries are outlaws, and that countries should legislate against such activities. Resolution 2548[149] in 1969, and Resolution 3103[150] in 1973 reaffirmed the earlier declarations.

---

[145] TIME, *supra* note 29, at 21.

[146] N.Y. Times, Jul., 10, 1976, at 6, col. 4.

[147] *Supra* note 68.

[148] *Supra* note 69.

[149] *Supra* note 70.

[150] *Supra* note 71.

OAU Resolution AHG/Res. 49(IV)[151] urged all world nations to enact laws declaring the recruitment and training of mercenaries in their territories a punishable crime and deterring their citizens from enlisting as mercenaries. Resolution CM/St. 6 (XVII)[152] in Addis Ababa strongly reaffirmed the determination of African peoples and States to take all necessary measures "to eradicate from the African continent the scourge that the mercenary system represents" and called for the mobilization of world opinion to ensure adoption of anti-mercenary legislation.

All of these Resolutions espouse general principles and aims since certain concepts vary greatly among different legal systems and might not be universally applicable. Instead, the precise scope and substance of each right or crime is left to national legislation. States ratifying these Resolutions undertake to protect their people by law against the activity outlined in the particular declaration. Ratifying States which violate these Resolutions are notified by the respective organizations of the violations, but neither the OAU or the United Nations have effective enforcement machinery, other than of ostracism by other member States.

In its search for international authority, the People's Revolutionary Court apparently ignored certain provisions of the International Covenant on Civil and Political Rights.[153] For example, Article 14(5) prescribes that everyone convicted of a crime has the right to have his conviction reviewed by a higher court.[154] The Revolutionary Penal Code provided for no such appeal. Article 15(1)[155] provides that no one shall be held guilty of an offense on account of any act or omission which did not constitute a crime under national or international law at the time when it was committed. As noted earlier, the law establishing the Court and purporting to prescribe the punishable offenses within the jurisdiction of the Court was enacted long after the defendants had been captured.

---

[151] Organization of African Unity Resolution 49 of the Assembly of Heads of State and Government meeting in its Fourth Ordinary Session in Kinshasa, Congo, from 11 to 14 Sept. 1967.

[152] Organization of African Unity Statement 6 of the Council of Ministers meeting in its Seventeenth Ordinary Session in Addis Ababa, Ethiopia, from 21 to 23 June, 1971.

[153] International Covenant on Civil and Political Rights, 21 U.N. GAOR Supp. 16, at 49, U.N. Doc. A/6316 (1976).

[154] *Id.*

[155] *Id.*

CONCLUSION

The Angola trial of mercenaries leaves much to be desired in terms of what constitutes present international penal jurisprudence. The judgment of the People's Revolutionary Court called attention to a political problem and to the need for effective legislation. The procedural fairness of the trial was commendable, but the countervailing substantive unfairness resulted in a miscarriage of justice. With this trial as one poor example, it would seem essential that future bodies affirm in advance the laws to be applied, the rules of procedure to be followed and the nature of evidence to be presented.

As members of the world community, all States must recognize their mutual obligation to each other to uphold universal standards of dignity, respect, equality and justice and not merely to act in their own self-interest. All States must likewise require of each other that these concepts of truth and justice and due process of law be observed, to the end of eliminating the need for laws of war. Emerging nations and established ones alike must be reminded that their real self-interest is in the humane treatment of all persons. Only if the international legal machinery strives to this end can there be any hope of achieving the goal of peace without resorting to the means of war.

MIKE J. HOOVER*

APPENDICES

The following are accurate representations of original documents reproduced by Lennox S. Hinds, member of International Commission of Enquiry on Mercenaries, in *The Trial of the Mercenaries June 7-19, 1976,* A SPECIAL REPORT.

APPENDIX I

INDICTMENT

The PEOPLE'S PROSECUTOR of the PEOPLE'S REVOLUTIONARY COURT, — in the name of the ANGOLAN PEOPLE and the PEOPLE'S REPUBLIC OF ANGOLA, makes the following INDICTMENT against: COSTAS GEORGIOU, known as "CALLAN"; ANDREW GORDON McKENZIE, MALCOLM

* J.D. Candidate, Case Western Reserve University, 1978.

McINTYRE, KEVIN JOHN MARCHANT, JOHN LAWLOR, COLIN CLIFFORD EVANS, MICHAEL DOUGLAS WISEMAN, CECIL MARTIN FORTUIN, DEREK JOHN BARKER, JOHN JAMES NAMMOCK, GUSTAVO MARCELO GRILLO, known as "GUS", DANIEL FRANCIS GEARHART and GARY MARTIN ACKER, — all duly identified in the statements, for the CRIME OF BEING MERCENARIES and for CRIMES AGAINST PEACE, committed by enemies of the ANGOLAN PEOPLE and the PEOPLE'S REPUBLIC OF ANGOLA, in a mercenary war of aggression carried out with the aim of extinguishing the independence of the country, enslaving, oppressing, [sic] and dividing the ANGOLAN PEOPLE and pillaging the natural resources of the territory for the benefit of foreign, neocolonialist [sic] and imperialist interests.

FIRST

I consider the preliminary investigation of the case to be complete, containing sufficient evidence of the punishable acts, and the identity and responsibility of the authors, for the case to be the subject of a trial by the PEOPLE'S REVOLUTIONARY COURT, the court competent to try this matter.

SECOND

At the end of 1975, faced with the victorious advance of FAPLA, the National Army of the PEOPLE'S REPUBLIC OF ANGOLA, which was defeating the simultaneous and concerted attack of the racist South African army, and the imperialist puppets FNLA and UNITA on all fronts, the colluding forces of American imperialism, racist South African fascism, bankrupt colonialism and the traitorous FNLA and UNITA bands, with the support and complicity of governments subject to the dictates of imperialism, decided to intensify the use of mercenaries. This new and criminal warlike aggression was a vain attempt to prevent the inexorable victory of the ANGOLAN PEOPLE, united in the establishment, maintenance and progress of the PEOPLE'S REPUBLIC OF ANGOLA.

THIRD

To this end these forces undertook a shameful public recruitment campaign in the UNITED STATES OF AMERICA and BRITAIN, through the mass media, to bring together ex-soldiers with military experience in other wars of aggression.

FOURTH

Their front men, working as recruiters, were interviewed by television and the press for publicity purposes, as is confirmed in relation to JOHN BANKS and NICHOLAS HALL, called "NICK" HALL in BRITAIN, and DAVE BUFKIN, GARY MARTIN ACKER and LOBO DEL SOL in the UNITED STATES OF AMERICA.

FIFTH

Offices were opened and functioned in NEW YORK and LONDON in which the interviews, contracting, classification and assembling of mercenaries were done, to augment the criminal group that were coming to attack the PEOPLE'S REPUBLIC OF ANGOLA and the ANGOLAN PEOPLE.

SIXTH

These organised offices allocated the enlisted mercenaries, some with experience gained in the criminal VIETNAM war and with training in infantry, paratroops, transport, etc., to different services according to their specialties.

SEVENTH

They contracted their criminal services against payment of a sum in dollars or pounds sterling, as well as other pecuniary advantages.

EIGHTH

They negotiated the air transport of AFRICA of the recruited mercenaries, they dealt with all emigration and customs formalities, such as passports, visas, etc., (in which the diligent activities of the SECURITY ADVISORY SERVICES (SAS) organisation in BRITAIN is notable), they assembled the mercenaries in previously arranged places, such as the London hotels PARK COURT HOTEL and TOWER HOTEL, sending them in different groups, some of more than a hundred people, to KINSHASA via BRUSSELS, PARIS or ATHENS, using SABENA AIRWAYS and AIR FRANCE planes.

NINTH

Shamefully, all this took place with every facility in broad daylight, without any preventive or, at least, restraining action being taken by the authorities of the countries where mercenary recruitment was going on. This strikingly demonstrates the acquiescence and complicity of the various governments particularly those of Britain and America, in the preparation and development of the criminal conspiracy.

TENTH

In particular, so far as the UNITED STATES OF AMERICA is concerned, it was clearly proved that the FEDERAL BUREAU OF INVESTIGATION (FBI) had full knowledge and control over the development of the mercenary recruitment operation.

ELEVENTH

When they had arrived in KINSHASA, ZAIRE, the mercenaries were searched by customs officials at KINSHASA airport, and were

interviewed by FNLA leaders of varying ranks, according to their potential criminal capability. Later some of them were moved to the INTERCONTINENTAL HOTEL.

TWELFTH

They next formed themselves into different groups, entrusting leadership to certain of the mercenaries, and placing FNLA troops, whom they pejoratively called "natives", under their command.

THIRTEENTH

The mercenaries were all armed and equipped with war material of American, British, French, Belgian, Portuguese and Chinese origin, by which is also shown the nature of the international "holy alliance" which criminally armed these enemies of the ANGOLAN PEOPLE.

FOURTEENTH

Finally crossing the border from ZAIRE, where all facilities were given to them by the border police, the mercenaries invaded the territory of the PEOPLE'S REPUBLIC OF ANGOLA, where they carried out the tasks which they had undertaken.

FIFTEENTH

They planted mines, made ambushes, caused the deaths of members of the national army and committed numerous murders of civilians, whom they also maltreated, insulted and harassed by their words and deeds. Using explosives, they destroyed bridges, buildings, military and civilian equipment and property. They set mines and traps along the roads, and the tracks leading to the peasants' fields. They robbed and looted.

SIXTEENTH

But they were defeated and captured by FAPLA with the help and collaboration of the people. So many crimes and acts of destruction cannot go unpunished. We will pass on to a description of the criminal activity of each defendant.

SEVENTEENTH

COSTAS GEORGIOU, also known as "CALLAN" and "COLONEL CALLAN", son of GEORGE GEORGIOU and HELEN GEORGIOU, single, twenty-five years old, born in CYPRUS on 21st December 1951, a naturalized British citizen, resident of 66 Kendal House, Priory Green Estate, London N1, Britain, with secondary education level, ex-British Army paratrooper, with previous convictions for robbery.

EIGHTEENTH

He was recruited in LONDON in November 1975 by two people known as BELFORD and TAYLOR, for the task of leading the contracted mercenary troops to invade the PEOPLE'S REPUBLIC OF ANGOLA and subjugate its people.

NINETEENTH

He crossed the border into the PEOPLE'S REPUBLIC OF ANGOLA armed and in uniform, and in December 1975 he was in the NEGAGE and CARMONA areas in the north of Angolan territory.

TWENTIETH

In the month of January 1976, the traitor HOLDEN ROBERTO appointed him as head of the mercenary soldiers serving the FNLA puppet band, after which he organised his troops into small groups, to be able to carry out surprise attacks.

TWENTY-FIRST

As part of his criminal mercenary activity the defendant COSTAS GEORGIOU, as head of a group of mercenaries and of groups of the puppet FNLA organisation, carried out numerous criminal acts such as:

a) Armed combat against FAPLA, the National army of the PEOPLE'S REPUBLIC OF ANGOLA;

b) Planting of minefields;

c) Destruction, by use of explosives, of bridges, buildings, military and civilian equipment and property;

d) Murder of defenceless [sic] civilians, as well as the maltreatment, insulting and harassment of civilians;

e) Murder, maltreatment, insulting and harassment of MPLA members and FAPLA fighters taken prisoner;

f) Looting of goods and subsistence needs of the civilian population;

g) Mining and setting traps on the access routes to the people's fields;

h) Murder of FNLA members;

i) Murder of other mercenaries.

TWENTY-SECOND

Among the many armed actions that he commanded and participated in with his group, the attack on DAMBA on 1st February 1976 can be singled out, as well as the ambush carried out against a FAPLA column on 3rd February, near QUIBOCOLO.

TWENTY-THIRD

As a result of the latter action a number of FAPLA soldiers were killed and wounded, and it was in the course of this action that the defendant, using an American-made M-66 rocket launcher was wounded

in the left leg when he was caught in the explosion which he himself had caused by firing on a FAPLA truck loaded with explosives, which he had taken for a tank.

TWENTY-FOURTH

The defendant COSTAS GEORGIOU, acting with furious anger, killed defenceless [sic] people daily so as to inculcate terror, subjugate, and take advantage of the people through whose areas he and his group passed. He imposed his despotic power by force and violence, and sowed panic and terror among the civilian population.

TWENTY-FIFTH

On 7th January 1976 he killed a civilian in SAO SALVADOR.

TWENTY-SIXTH

He killed an FNLA soldier in the SAO SALVADOR barracks.

TWENTY-SEVENTH

In the same town he struck five people dressed in civilian clothes, and accused them of being soldiers because they were wearing boots. These people were taken to the barracks where they disappeared.

TWENTY-EIGHTH

In QUIBOCCOLO he ordered the mercenary CHARLIE to eliminate physically two FNLA soldiers, just because they appeared on parade, without military uniform.

TWENTY-NINTH

In an advanced mercenary troop position near MAQUELA DO ZOMBO, he tortured and murdered an MPLA messenger and another member of the civilian population.

THIRTIETH

In the same place he robbed an FNLA soldier of his watch and money and ordered CHARLIE to kill him immediately. He reprimanded the latter for having used two bullets to kill the victim instead of one.

THIRTY-FIRST

Still in the same place, without previous discussion, he ordered CHARLIE to kill another FNLA soldier who came to where he was.

THIRTY-SECOND

In the MAQUELA DO ZOMBO area, on 1st February 1976, he murdered an English mercenary with three shots, shouting at the same time: " . . . THIS IS THE LAW HERE . . .", and ordered his as-

sistant SAM COPELAND to execute thirteen other British mercenaries who wanted to return to ENGLAND, because of the victorious advance of FAPLA. This mass murder occurred in the presence of some of the rest of the mercenary soldiers and its objective was clearly to intimidate them and compel them to continue their mercenary activity.

THIRTY-THIRD

The defendant in his brief career as "hired killer", as the international press justly described him, was shown by his activities to have a deep hatred of the people and to be extremely racist. This showed in his criminal behaviour, which also revealed his extreme contempt for human life. His fascist mentality combined with his uncontrolled lust for material wealth, made him kill men, women and children for sadism and money.

THIRTY-FOURTH

The defendant tried to justify his crimes by saying that his victims were undesirable elements, whether "natives", whom he considered an "inferior race", thieves and opportunists; or the other mercenaries whom he considered to be cowards because they did not dare to carry out his criminal orders.

THIRTY-FIFTH

ANDREW GORDON McKENZIE, son of GORDON FINDLAY McKENZIE and STELLA McKENZIE, single, twenty-five years old, born in NORTH GRIMSBY, ENGLAND on 4th July 1950, British citizen, resident at 47, Alexander Road, Aldershot, England, with secondary level education, ex-British Army paratrooper.

THIRTY-SIXTH

He was recruited by JOHN BANKS in the middle of January 1976, in a pub together with other mercenaries, the job arrangements later being confirmed at the TOWER HOTEL, LONDON. According to his contract, the defendant McKENZIE would receive 600 pounds sterling per month to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA. He received an advance of 500 dollars while he was still in LONDON.

THIRTY-SEVENTH

On the day following his interview in the above-mentioned hotel he took a plane, with other mercenaries, to BRUSSELS and then on to KINSHASA via ATHENS. In KINSHASA HE WAS SUPPLIED WITH a uniform and military equipment.

THIRTY-EIGHTH

He crossed the border from ZAIRE into the PEOPLE'S REPUBLIC OF ANGOLA, armed and in uniform, and went to SAO SALVADOR with other mercenaries, around 20th January 1976. In this town the group was divided, one section of the mercenaries continuing to SANTO ANTONIO DO ZAIRE and the rest remaining in SAO SALVADOR and MAQUELA DO ZOMBO with the defendant CALLAN.

THIRTY-NINTH

The defendant was part of the group named "killer group", commanded by the defendant CALLAN and of which, together with other dead or disappeared mercenaries, the defendants McINTYRE, MARCHANT, EVANS and WISEMAN were also a part.

FORTIETH

In his mercenary activity the defendant McKENZIE, being a right hand man of the defendant CALLAN, carried out numerous criminal acts, such as:

a)—Armed action against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA;

b)—Planting of minefields;

c)—Destruction, by the use of explosives, of bridges, buildings and military and civilian equipment and property;

d)—Maltreatment, insults and harassment of the civilian population;

e)—Violation of homes and kidnapping of civilians, and their use as hostages;

f)—Stealing of property and subsistence needs of the civilian population;

g)—Murder of other mercenaries.

FORTY-FIRST

Among the many other armed actions against the national Angolan army in which he participated the attack on DAMBA on 1st February can be singled out, as well as the ambush carried out against a FAPLA column on 3rd February in QUIBOCOLO, as a result of which several wounded and dead were caused among fighters of the national army.

FORTY-SECOND

With other mercenaries, and by using death threats, he occupied the house of the peasants JAO ANTONIO and SENDA ISABEL. He exercised physical and mental violence against SENDA ISABEL, who was pregnant at the time. He kept the peasant couple prisoner and with other occupants, took unwarranted advantage of them, their property and the food in the house.

FORTY-THIRD

Using the peasant couple as hostages he forced them, against their patriotic conscience and by threatening to shoot them, to show him the way to the nearest village, so that he could ensure the retreat of his group, the commander of which, CALLAN, was wounded.

FORTY-FOURTH

As a right hand man of CALLAN, the defendant McKENZIE was present and directly participated in the murder of the thirteen British mercenaries on 1st February 1976, in the MAQUELA DO ZOMBO area, already described in the previous article 32.

FORTY-FIFTH

MALCOLM McINTYRE, son of MONTAGUE WRIGHT and DORIS WRIGHT, widower, twenty-six years old, born in PERTH, SCOTLAND, on 22 June 1949, British citizen, resident at 37, Norwick Walk, Basildon, Essex, England, with secondary level education and a nursing qualification.

FORTY-SIXTH

He was recruited by JOHN BANKS and on 27th January 1976 was interviewed and stayed in the PARK COURT HOTEL, where he was contracted for the sum of 150 (one hundred and fifty) pounds sterling per week so that, as a mercenary, he could provide nursing care for the mercenaries in ANGOLA. He received an advance of 150 pounds while he was still in LONDON.

FORTY-SEVENTH

He left LONDON with a group of eighty mercenaries, bypassing all emigration and customs formalities by presenting a simple form with his photograph, that he had taken in the hotel, attached to it. He made a stop in BRUSSELS and arrived in KINSHASA on 28th January 1976, where he was supplied with a uniform and an FN rifle, made in Belgium.

FORTY-EIGHTH

He crossed the border of the PEOPLE'S REPUBLIC OF ANGOLA from ZAIRE, armed and in uniform, on 30th January 1976, going with other mercenaries to SAO SALVADOR.

FORTY-NINTH

The defendant was part of the group called "killer group," directly under the orders of CALLAN.

FIFTIETH

He participated in armed combats against FAPLA, national army of the PEOPLE'S REPUBLIC OF ANGOLA, in particular the already

mentioned combats in DAMBA and QUIBOCOLO, on 1st and 3rd February 1976, in which the forces of the national army suffered several dead and wounded.

FIFTY-FIRST

He also participated, as a member of the group already mentioned, in the planting of mine fields, in destruction by use of explosives, of bridges, buildings, military, and civilian equipment and property.

FIFTY-SECOND

He was part of the group which occupied the house of the peasants JOAO ANTONIO and SENDA ISABEL, in the circumstances mentioned previously.

FIFTY-THIRD

KEVIN JOHN MARCHANT, son of LESLIE MARCHANT and MAY HILDA MARCHANT, married, twenty-five years of age, born in EDGEWARE, MIDDLESEX, ENGLAND on 15th November 1950, British citizen, resident in HAMPSHIRE, ENGLAND with secondary level of education, ex-British army soldier.

FIFTY-FOURTH

He was recruited at the end of January 1976 by the "SECURITY ADVISORY SERVICES (SAS)," by the recruiting agent JOHN BANKS, with a contract of £150 per week, to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA.

FIFTY-FIFTH

He left LONDON, as part of the group of 80 mercenaries referred to above. He made a stop in BRUSSELS and arrived in KINSHASA on 28th January 1976 where he was supplied with uniform and military equipment.

FIFTY-SIXTH

He crossed the border into the PEOPLE'S REPUBLIC OF ANGOLA from ZAIRE on 30th January 1976, going with the other mercenaries to SAO SALVADOR.

FIFTY-SEVENTH

The defendent was part of the group known as the "Killer group" directly under the orders of "CALLAN."

FIFTY-EIGHTH

He participated in armed combat against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA, and in particular in the combats already described, DAMBA and QUIBOCOLO on 1st and

3rd February 1976 which caused the deaths and wounding of soldiers of the national army.

FIFTY-NINTH

He also participated, with the group mentioned earlier, in the planting of mine fields, and in the destruction by use of explosives, of bridges, buildings, military and civilian equipment and property.

SIXTIETH

He was part of the group which occupied the house of the peasants JOAO ANTONIO and SENDA ISABEL, in the circumstances already described.

SIXTY-FIRST

JOHN LAWLOR, son of JOHN JOSEPH LAWLOR and CATHERINE AGNES LAWLOR, single, twenty-three years of age, born in FARNBOROUGH, ENGLAND on the 11th January 1953, British citizen resident at 76, BROOM HILL ROAD, COVE, HAMPSHIRE, ENGLAND, with secondary level of education, ex-British naval fusilier.

SIXTY-SECOND

He was recruited by JOHN BANKS, on 15th January 1976, after he had been called on the telephone at home. He was contracted for the sum of 150 (one hundred and fifty) pounds sterling per week to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA. He received 150 pounds as an advance while he was still in LONDON.

SIXTY-THIRD

He left LONDON, as part of the group of 80 mercenaries already mentioned on 28th January 1976, transitting through BRUSSELS and arrived in KINSHASA on 29th January 1976, where he was supplied with uniform and military equipment.

SIXTY-FOURTH

At the end of January 1976 he crossed the border into the PEOPLE'S REPUBLIC OF ANGOLA from ZAIRE, armed and in uniform going to SAO SALVADOR with other mercenaries and staying there under the orders of the co-defendant "CALLAN."

SIXTY-FIFTH

He participated in armed actions against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA, and in particular in the combats at DAMBA and QUIBOCOLO on 1st and 3rd February 1976 from which the national army suffered dead and wounded.

SIXTY-SIXTH

He also, with other mercenaries, participated in the planting of minefields and used explosives to destroy bridges, buildings and military and civilian equipment and property.

SIXTY-SEVENTH

He was a member of the group that occupied the house of the peasants JOAO ANTONIO and SENDA ISABEL, in the above mentioned circumstances.

SIXTY-EIGHTH

COLIN CLIFFORD EVANS, son of ROBERT EVANS and EDITH EVANS, legally separated, twenty-eight years of age, born in HEMSWORTH, YORKSHIRE, ENGLAND on 17th February 1948, British citizen resident at 11, CEDAR ROAD, CHICKENLEY, DEWSBURY, ENGLAND, with secondary level of education, ex-British Army soldier.

SIXTY-NINTH

He was recruited in LONDON on 27th January 1976 by JOHN BANKS, through SECURITY ADVISORY SERVICES (SAS), being contracted at 150 (one hundred and fifty) pounds sterling per week to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA. He received an advance of 150 pounds in LONDON.

SEVENTIETH

He left LONDON in the group of 80 mercenaries referred to above, transitting through BRUSSELS and arriving at KINSHASA on 29th January 1976, where he was given a uniform and military equipment.

SEVENTY-FIRST

At the end of January 1976 he crossed the border into the PEOPLE'S REPUBLIC OF ANGOLA from ZAIRE, going to SAO SALVADOR with other mercenaries.

SEVENTY-SECOND

The defendant was a member of the special commando group named "KILLER GROUP" under the direct orders of "CALLAN."

SEVENTY-THIRD

He participated in armed actions against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA, and in particular in the actions on 1st and 3rd February 1976, at DAMBA and QUIBOCOLO from which the national army suffered dead and wounded.

SEVENTY-FOURTH

He also, with other mercenaries, participated in the planting of minefields and used explosives to destroy bridges, buildings and military and civilian equipment and property.

SEVENTY-FIFTH

He was a member of the group that occupied the house of the peasants JOAO ANTONIO and SENDA ISABEL, in the circumstances above mentioned.

SEVENTY-SIXTH

MICHAEL DOUGLAS WISEMAN, son of PERCY DOUGLAS WISEMAN and MARY GLYN, married, twenty-seven years of age, born in FINCHLEY, LONDON, ENGLAND on 8th April 1949, British citizen, resident at 87 Flamstead End Road, Cheshunt, Hertfordshire, England, with secondary level education, ex-British Army soldier.

SEVENTY-SEVENTH

He was recruited in LONDON on 27th January 1976 by JOHN BANKS, being contracted at 150 (one hundred and fifty) pounds sterling per week to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA.

SEVENTY-EIGHTH

He left LONDON in the group of 80 mercenaries referred to above, transitting through BRUSSELS and arriving at KINSHASA on 29th January 1976, where he was supplied with a uniform and military equipment.

SEVENTY-NINTH

At the end of January 1976 he crossed the border by road into the PEOPLE'S REPUBLIC OF ANGOLA from ZAIRE, armed and in uniform, going to SAO SALVADOR with the other mercenaries.

EIGHTIETH

The defendant was a member of the special commando group known as "KILLER GROUP," under the direct orders of "CALLAN."

EIGHTY-FIRST

He participated in armed actions against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA, and in particular in the combats at DAMBA and QUIBOCOLO on 1st and 3rd February 1976 already described, from which the national army suffered dead and wounded.

EIGHTY-SECOND

He also, with other mercenaries, participated in the planting of minefields and used explosives to destroy bridges, buildings and military and civilian equipment and property.

EIGHTY-THIRD

He was a member of the group that occupied the house of the peasants JOAO ANTONIO and SENDA ISABEL, in the circumstances above mentioned.

EIGHTY-FOURTH

CECIL MARTIN FORTUIN, known as 'SCOTCH', son of JOHN FORTUIN and DORIS FORTUIN, divorced, thirty-one years of age, born in CAPE TOWN, SOUTH AFRICA, on 25th June 1944, naturalized British citizen, resident at 23 Naseby Road, Kettering, Northants, England, ex-British Army paratrooper.

EIGHTY-FIFTH

He was recruited in LONDON on 23rd January 1976 by JOHN BANKS to be his bodyguard, at 300 (three hundred) pounds sterling. He did this job at the time the mercenaries were being called together at the PARK COURT HOTEL in LONDON on 27th January 1976.

EIGHTY-SIXTH

He left LONDON in the group of 80 mercenaries on 28th January 1976, transitting through BRUSSELS and arriving at KINSHASA on 29th January 1976, where he was supplied with a uniform and military equipment.

EIGHTY-SEVENTH

On the same day, 29th January 1976, accompanying JOHN BANKS, he joined an escort force for the traitor HOLDEN ROBERTO who was going to SAO SALVADOR.

EIGHTY-EIGHTH

At the end of January 1976 he crossed the border from ZAIRE into the PEOPLE'S REPUBLIC OF ANGOLA, armed and in uniform.

EIGHTY-NINTH

In SAO SALVADOR he joined the mercenary forces and was sent to the advanced post established by CALLAN on the MAQUELA QUIBOCOLO road.

NINETIETH

He participated in armed actions against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA, in particular in the attack on DAMBA on 1st February 1976, already described, from which the national army suffered dead and wounded.

NINETY-FIRST

He also participated in the planting of minefields and used explosives to destroy bridges, buildings and military and civilian equipment and property.

NINETY-SECOND

DEREK JOHN BARKER, son of GEORGE BARKER and ANN BARKER, divorced, thirty-four years old, born in BIRMINGHAM, ENGLAND on 1st August 1941, British citizen, resident at 47 Alexander Road Aldershot, England, with secondary level education, ex-British Army paratrooper, with a long criminal record.

NINETY-THIRD

He was recruited by JOHN BANKS on 16th January 1976, in the bar of the QUEEN'S HOTEL, in ALDERSHOT, ENGLAND, being contracted for the sum of 150 (one hundred and fifty) pounds sterling a week to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA.

NINETY-FOURTH

He left LONDON with a group of mercenaries by passing emigration and customs formalities by means of presenting a simple form with his photograph on it, taken in the hotel, thanks to the intervention of "SECURITY ADVISORY SERVICES (SAS)." He arrived at KINSHASA on 19th January 1976, having transitted through BRUSSELS and ATHENS.

NINETY-FIFTH

At KINSHASA he had meetings with the traitor HOLDEN ROBERTO, and was supplied with a uniform and military equipment.

NINETY-SIXTH

On 20th January 1976 he crossed the land border into the PEOPLE'S REPUBLIC OF ANGOLA, and went with other mercenaries to SAO SALVADOR, where he was appointed "Captain" and stationed in SANTO ANTONIO DO ZAIRE. Later he took on command of this zone.

NINETY-SEVENTH

At SANTO ANTONIO DO ZAIRE he gave military traning to groups of the traitor FNLA movement.

NINETY-EIGHTH

He was in charge of maintaining the occupation of that martyred town by mercenary and puppet troops, who oppressed, coerced and humiliated the civilian population.

NINETY-NINTH

He planned, organised and executed a number of military actions, with reconnaissance missions, planting of mines, destruction of bridges and communication routes aimed at preventing the liberation of the town by FAPLA.

HUNDREDTH

This stubborn resistance resulted in dead and wounded for the national army forces, and the destruction of military and civilian equipment and property.

HUNDRED AND FIRST

JOHN JAMES NAMMOCK, son of WILLIAM NAMMOCK and NOREEN NAMMOCK, bachelor, twenty years old, born in LONDON on 6th November 1955, Irish citizen, resident at 183 Homefield House, Hazelwood Crescent, London W10, England, with secondary level education, reserve paratrooper.

HUNDRED AND SECOND

He was recruited in LONDON in January 1976 by JOHN BANKS, being contracted for the sum of 150 (one hundred and fifty) pounds sterling a week to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA. He received an advance in LONDON of 150 (one hundred and fifty) pounds sterling.

HUNDRED AND THIRD

He left LONDON on 8th February, part of a group of twenty-five mercenaries who had gathered on 4th February 1976 at the POST HOUSE HOTEL, and transitting through BRUSSELS and ATHENS arrived at KINSHASA on the following day, where he was given a uniform and military equipment.

HUNDRED AND FOURTH

On 9th February he crossed the border into the PEOPLE'S REPUBLIC OF ANGOLA from ZAIRE, with other mercenaries going to SAO SALVADOR on board a plane belonging to the Angolan airline TAAG, illegally in the possession of FNLA.

HUNDRED AND FIFTH

He participated in armed actions against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA, for which he volunteered.

HUNDRED AND SIXTH

In particular he took part in reconnaissance patrols, as radio operator, and participated in an action against FAPLA on 13th February 1976 in which he was wounded and captured.

HUNDRED AND SEVENTH

GUSTAVO MARCELO GRILLO, also known as "GUS," son of LUIS GRILLO and LAURA POLLECHI GRILLO, bachelor, twenty-seven years old, born at BUENOS AIRES, ARGENTINA on 2nd August 1949, naturalised North American, resident at 935, Garfield Avenue, Jersey City, New Jersey, United States of America, with secondary level education, ex-"marine," Vietnam war veteran, with previous convictions for "racketeering."

HUNDRED AND EIGHTH

Following the publicity campaign promoted on Channel 7 of the American television network ABC by David BUFKIN, also a Vietnam war veteran, he was contracted in January 1976 for the sum of 2,000 (two thousand) dollars a month to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA. He received 1,000 (one thousand) dollars as an advance on his arrival in KINSHASA.

HUNDRED AND NINTH

With six other mercenaries who gather on 5th February 1976 at the SKY VIEW HOTEL, NEW YORK, he left NEW YORK on 6th February, arriving at KINSHASA the following day via PARIS.

HUNDRED AND TENTH

On 10th February 1976 he crossed the land border into the PEOPLE'S REPUBLIC OF ANGOLA from ZAIRE, armed and in uniform, going to SAO SALVADOR.

HUNDRED AND ELEVENTH

In SAO SALVADOR he organised the security positions at the mercenary headquarters.

HUNDRED AND TWELFTH

He commanded a combat unit composed of Americans, British and about three hundred and sixty Angolans, members of the puppet FNLA organisation, having given the latter military training.

HUNDRED AND THIRTEENTH

He participated in armed actions against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA.

HUNDRED AND FOURTEENTH

He organised the defence of SAO SALVADOR, mining and setting traps on the access routes to the town, and commanded reconnaissance patrols.

HUNDRED AND FIFTEENTH

On 13th February 1976 he was captured during a combat with FAPLA, having offered resistance by firing on the national army forces, which suffered losses.

HUNDRED AND SIXTEENTH

The defendant recalls with pride having participated in the criminal Vietnam war and having committed war crimes there, such as the destruction of villages, cultivated land and the means of subsistence, and the deportation of the civilian population. He planned to use these criminal methods in ANGOLA.

HUNDRED AND SEVENTEENTH

DANIEL FRANCIS GEARHART, son of DANIEL MONTGOMERY GEARHART and PAULINE ELIZABETH GEARHART, married, thirty-four years old, born in WASHINGTON, DC, UNITED STATES OF AMERICA on 9th November 1941, North American Nationality, resident at 3021, Fayette Road, Kessington [sic], Maryland, United States of America, with secondary level education, Vietnam war veteran.

HUNDRED AND EIGHTEENTH

He offered himself as a mercenary, placing an advertisement to this effect in various newspapers and journals, among which was "THE SOLDIER OF FORTUNE," a magazine specialising in mercenary affairs, published in the United States of America.

HUNDRED AND NINETEENTH

He was recruited in the UNITED STATES OF AMERICA by DAVID BUFKIN, being contracted at 1,200 (one thousand two hundred) dollars a month to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA.

HUNDRED AND TWENTIETH

He left NEW YORK for KINSHASA at the time and in the circumstances described in relation to the defendant GRILLO.

HUNDRED AND TWENTY-FIRST

[O]n 10th February 1976 he crossed the land border into the PEOPLE'S REPUBLIC OF ANGOLA from ZAIRE, armed and in uniform, going to SAO SALVADOR.

HUNDRED AND TWENTY-SECOND

He commanded a combat section, and gave military training to FNLA troops.

HUNDRED AND TWENTY-THIRD

He participated in armed actions against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA.

HUNDRED AND TWENTY-FOURTH

He participated in the defence of SAO SALVADOR, mining and setting traps on the access routes, and taking part in reconnaissance patrols.

HUNDRED AND TWENTY-FIFTH

On 13th February 1976, he was captured during a combat with FAPLA, after offering resistance by firing on the national army forces, which suffered losses.

HUNDRED AND TWENTY-SIXTH

GARY MARTIN ACKER, son of CARL MARTIN ACKER and JOYCE ACKER, bachelor, twenty-one years old, born at SACRAMENTO, CALIFORNIA on 25th October 1954, North American nationality, resident at 2342, Cork Circle, Sacramento, California 95822 USA, secondary level education, ex-"marine" Vietnam war veteran.

HUNDRED AND TWENTY-SEVENTH

He was recruited in CALIFORNIA in November 1975, by DAVID BUFKIN, being contracted for 1,200 (one thousand two hundred) dollars a month to participate as a mercenary in the war of aggression against the PEOPLE'S REPUBLIC OF ANGOLA.

HUNDRED AND TWENTY-EIGHTH

He collaborated directly in the recruitment of other mercenaries, by participating in the publicity campaign through television interviews, and by organising registration cards for the mercenary applicants.

HUNDRED AND TWENTY-NINTH

He left NEW YORK for KINSHASA, at the time and in the circumstances already described in relation to the defendants GRILLO and GEARHART.

HUNDRED AND THIRTIETH

On 10th February 1976 he crossed the land border into the PEOPLE'S REPUBLIC OF ANGOLA from ZAIRE, armed and in uniform, going to SAO SALVADOR.

HUNDRED AND THIRTY-FIRST

He participated in mounting the security positions at the mercenary headquarters in SAO SALVADOR, and gave military training to FNLA troops.

HUNDRED AND THIRTY-SECOND

He participated in armed actions against FAPLA, the national army of the PEOPLE'S REPUBLIC OF ANGOLA, in particular in reconnaissance actions, and mounted the security positions for the group of mercenaries who went to mine a bridge over CUIMBA.

HUNDRED AND THIRTY-THIRD

On 14th February he was wounded and captured in a combat with FAPLA, after offering resistance by firing on the national army forces, who suffered losses.

HUNDRED AND THIRTY-FOURTH

The facts described in the first part of this indictment consistantly show voluntary enlistment, for a sum of money in wages, apart from any other pecuniary advantages, to participate in a war of aggression against the sovereignty, territorial integrity and independence of the PEOPLE'S REPUBLIC OF ANGOLA, in the service of neo-colonialism and imperialism, and with the aim of subjecting the ANGOLAN PEOPLE to a regime of exploitation, oppression and degradation. The facts constitute the CRIME OF BEING A MERCENARY, as is specifically set out in the STATEMENT OF THE HEADS OF STATES AND GOVERNMENTS OF MEMBER COUNTRIES OF THE OAU — ORGANISATION OF AFRICAN UNITY — held in KINSHASA, in 1967; in the STATEMENT ON MERCENARY ACTIVITIES IN AFRICA, ADDIS ABEBA [sic] 1971, and RESOLUTIONS NO. 2395 (XXIII), 2465 (XXIII), 2548 (XXIV), and 3103 (XXVII) OF THE UNITED NATIONS GENERAL ASSEMBLY.

HUNDRED AND THIRTY-FIFTH

All of the defendants are authors of this crime by their direct action and full consciousness of its illegality, and because of their conduct.

HUNDRED AND THIRTY-SIXTH

The facts described in the first part of this indictment in addition to being a part of a war of aggression promoted by imperialism against the PEOPLE'S REPUBLIC OF ANGOLA also can constitute CRIMES AGAINST PEACE, as described in the STATUTE OF NUREMBERG INTERNATIONAL MILITARY TRIBUNAL, and confirmed by UNITED NATIONS RESOLUTION NO. 95 (I) of the 11th December 1946 and by the UNITED NATIONS GENERAL ASSEMBLY RESOLUTION OF 1974.

HUNDRED AND THIRTY-SEVENTH

All the defendants are actual authors of this crime, since they voluntarily and consciously carried it out.

HUNDRED AND THIRTY-EIGHTH

The crime of being mercenaries and crimes against peace were extremely serious in the way they were committed: armed violation of the border; combat action against the FAPLA, the national army of Angola, which resulted in dead and wounded; the destruction of bridges, communication routes, military and civilian equipment and property; setting of mines and traps in tracks leading to peasants fields; murders, maltreatment, insults and harassment of members of the civilian population; murder of MPLA members; of other mercenaries and of FNLA soldiers; kidnapping of civilians and stealing of their property, all of which are detailed in relation to each of the accused in the first part of the indictment.

HUNDRED AND THIRTY-NINETH [sic]

The crimes committed by the defendants and previously attributed to each and every one of them are characterised in the international principles cited and in current penal law, as extremely grievous crimes and, both by their character as war crimes and by their being committed by enemies of the PEOPLE'S REPUBLIC OF ANGOLA and the ANGOLAN REVOLUTION they should be punished within the terms of the COMBATANTS DISCIPLINARY LAW, 10th July 1966, CHAPTER III, SECTION C NO. 9, and SECTION D NO. 10, LINE H, with the DEATH PENALTY.

HUNDRED AND FORTIETH

As proof of the present indictment the following agencies are used:

A) CONFESSIONS OF THE DEFENDANTS

B) WITNESSES

1. Manuel Fernandes Barros
2. Miséria João
3. João António
4. Garcia Juama Kenene Giangue
5. José Afonso Carlos
6. Afonso Heriques Moisés
7. António Joaquim Sumba
8. Raúl Balaca
9. Nelson Gustavo dos Santos Gaspar
10. Anibal Rodrigues Moreira Palhares, Júnior
11. Senda Isabel
12. Pedro Noé Kediamosiko
13. Joaquim Pinto Júnior
14. Miguel David
15. Luis Candido Cordeiro
16. Vasco Arnaldo Guimarães de Castro

17. Ako Joseph Nai
18. Venâncio da Silva Lambo
19. Augusto Manuel
20. José do Espirito Santo Jordão
21. Rui Guilherme Cardoso de Matos

C. EXPERTS EVIDENCE:

1. Report of Psychiatric doctors:
   1.1. António José Pereira Africano Neto
   1.2. Reinaldo Correia Frimino Gregório
2. Report of Clinical doctors:
   2.1. Maria do Rosário Rodriguez
   2.2. Raul Pedro Hendrik da Silva
3. Report of the Forensic doctors:
   3.1. Carlos Alberto da Silva Lopes
   3.2. Raul Pedro Hendrik da Silva

D. OTHER PROOFS ARISING FROM THE CASE.

THE PEOPLE'S PROSECUTOR

/s/ _____

Manuel Rui Alves Monteiro

CONCLUSION

On the twenty-sixth day of May nineteen hundred and seventy-six I make the concluding report.

Clerk

1— As a result of the evidence shown in the reports, I decide that the case should proceed so that the defendants: COSTA GEORGIOU, ANDREW GORDON McKENZIE, MALCOLM McINTYRE, KEVIN JOHN MARCHANT, JOHN LAWLOR, COLIN CLIFFORD EVANS, MICHAEL DOUGLAS WISEMAN, CECIL MARTIN FORTUIN, DEREK JOHN BARKER, JOHN JAMES NAMMOCK, GUSTAVO MARCELO GRILLO, DANIEL FRANCIS GEARHART and GARY MARTIN ACKER, shall be brought to trial, for an inquiry into their criminal responsibility.

I therefore charge them with the facts named in the indictment made by the Comrade People's Prosecutor, which are as if reproduced here, and which I offer as an integral part of this notice of charges, and as facts that principally comprise the crime of being a mercenary and crimes against peace.

The Court also takes note that the defendants were part of a stable and organized group and were all conscious of the fact that this group had been constituted to commit crimes within the borders of the People's Republic of Angola.

2— As official defense counsel for the defendants CALLAN, CECIL MARTIN AND DEREK BARKER I designate comrade EDGAR FRANCISCO VALES; for the defendants McKENZIE, WISE-

MAN, MARCHANT and NAMMOCK, comrade MARIA TERESINHA LOPES; and for the defendants McINTYRE, EVANS and LAWLOR, comrade FERNANDO LUIS DA SILVA, that is JOSE SOARES DA SILVA.

3— The defendants shall be notified:

—of the text of the indictment and of this notice of charges, copies of which must be given to them

—of the identity of their appointed defense

—that they are free to appoint a lawyer or defender of their choice up to the day of trial

—that the case file can be consulted freely by their defense lawyers, nominated or chosen, during a period of eight days

—that, during the eight day period, they can present their defense in writing, indicating, if they wish, the witnesses and other means of proof that will be presented at the trial, as well as raising any other relevant questions.

Luanda, 26th May 1976

PRESIDENT OF THE COURT

APPENDIX II

VERDICT

[1] The honorable People's Prosecutor in this Tribunal has presented the case against the defendants COSTAS GEORGIOU, known as "CALLAN", ANDREW GORDON McKENZIE, MALCOLM McINTYRE, KEVIN JOHN MARCHANT, JOHN LAWLOR, COLIN CLIFFORD EVANS, MICHAEL DOUGLAS WISEMAN, CECIL MARTIN FORTUIN, DEREK JOHN BARKER, JOHN JAMES NAMMOCK, all of British nationality, and GUSTAVO MARCELO GRILLO, known as "GUS", DANIEL FRANCIS GEARHEART [sic] and GARY MARTIN ACKER, citizens of the United States of America and all, together with the others, signatories of their statements, having charged them with committing crimes of mercenarism and against peace, because, and in his view, the defendants, together with many others, were recruited as mercenaries in Great Britain and the United States of America, through specialised agencies which operated there freely and with the consent of the authorities of these two countries, having been transported by air to the capital of Zaire, where, with the complicity of the government of that country, they were outfitted with uniforms and military equipment.

[2] Once they had been thus outfitted, the defendants, in the company of others, crossed the Angolan border illegally, and, putting themselves at the side of the puppet F.N.L.A. group, whose troops

they commanded, they laid mines, made ambushes, destroyed bridges, buildings, property and military equipment, caused losses in the national army and ill-treated, harassed and carried out mass murders of the civilian population.

[3] Hence, still in his view, they had to be brought to trial to be subjected to the rigour of the law.

[4] The indictment having been heard, the legal proceedings, without omissions or nullity, followed their legal course, the defendants, through their defence counsel, having presented their defence and put forward their evidence, all of which was noted by the Tribunal.

[5] And the trial having been held, with full respect for the forms of legal procedure, it is now the duty of the Tribunal to pronounce itself.

[6] CONSEQUENTLY:

1. From a critical assessment of the evidence, it has been found that in Camberley, Surrey, Great Britain, there is a legally existing agency, registered on 14 August 1975, which operates under the registered name of "Security Advisory Services", and which uses the abbreviation S.A.S., which initials, by calculated coincidence, are absolutely identical to those of the "Special Air Service", a top section of the British armed forces.

[7] The said agency is run by John Banks, an ex-paratrooper, Leslie Aspin, a gun-runner and British secret service agent, and Frank Perren, an ex-marine, assisted by Terence Haig, a so-called F.N.L.A. spokesman in England. It was Haig who admitted that the agency handled incredible sums of money coming from the United States of America, "but not from any private company in that country," — see p. 1093 — and funds channeled through President Mobutu of Zaire — see pp. 1103, 1129 and also the "Sunday Times" of 25-1-76 and "The Times" of 4-2-76. James Hilton, another person having links with the organisation, corroborated that the agency had at its disposal 42 million dollars coming from the United States of America — see p. 1100 and also the British paper "The Morning Star" of 29-1-76. The money reached the coffers of S.A.S. through messengers from Zaire, from a doctor in Leeds, through bank transfers made in Belgium through the Zaire embassy in London — see p. 1120 and "The Observer" of 1-2-76. At the same time, Gerald Ford, president of the United States, in a filmed interview given to Tom Brokaw, an NBC reporter, on 3 January 1976, confirmed that American federal government funds were being diverted to the war in Angola, since the United States was co-operating with friendly countries engaged in the Angolan conflict — see p. 1020.

[8] Furthermore, a secret report drawn up by the National Security Studies Centre in Washington D.C. [sic] Vol. I, No. I, reported that the CIA, coming to Holden Roberto's help, had just invested a further 50 million dollars in the Angolan conflagration, and this within the framework of direct United States involvement in that conflict.

[9] This open intervention in the tragic events in Angola had been recommended by the top secret "40 Committee", headed, among others, by Kissinger and William Colby, CIA director, and was a part of the "New Look" of American foreign policy, which, as a result of the

debacle in Vietnam, was intended "to change the colour of the corpses" — see p. 996.

[10] Thus, the facts indicate that the S.A.S. was a CIA subsidiary in Great Britain.

[11] Did the British government know this? S.A.S. did its mercenary agency advertising in newspapers and over the radio. The departure of the recruited mercenaries was given sensational coverage by the press. The London police organised and protected a meeting of mercenaries in the basement of a church at Tower Hamlets, East London, on the amiable pretext that they were a film team. At London Airport there was no control of any kind, it being sufficient for the mercenaries without passports merely to show a paper with the S.A.S. initials on it to be able to pass freely through the exit doors.

[12] What is more, Harold Wilson made it clear that he knew about the recruiting of mercenaries and that it involved "vast sums" of money and correct lists of British military units, although he refused to answer the question as to whether or not he thought the CIA was involved in the business.

[13] However, the CIA involvement had been publicly revealed by John Banks himself, who had pointed out that the liaison agent was one Major James F. Leonard, assistant military attaché at the American embassy in London since June 1973 — see pp. 1142 and 1120, "The Times" of 23-2-76 and "The Observer" of 1-2-76.

[14] Therefore, how can there be any doubt about the active complicity of the British Government, at a time, moreover, when that government was officially calling for the recruitment of forces for Israel?

[15] It is therefore clear that the major capitalist powers were agreeing among themselves on a programme for the overthrow of the People's Republic of Angola and that, having realised that direct military intervention was unviable, they resorted to private armies. Which they regimented, armed and paid. And the defendants were in fact the instruments for the action of this political orchestration!

[16] But it was the S.A.S. agency that proceeded to recruit mercenaries for Rhodesia and mercenaries for Angola. The latter numbered 128 and, divided into two groups, they were sent to Kinshasa via Brussels.

[17] And the agency was preparing to send 500 more mercenaries the following fortnight.

[18] These mercenaries were contracted for a period of six months at a rate of pay of 150 pounds a week paid in American dollars, and their job, on the battlefronts or as members of military support groups, was to join the forces of the anti-nationalist F.N.L.A. group for the purpose of helping to overthrow the legitimate government of the young People's Republic of Angola, that is, to ensure that the F.N.L.A., using violent means therefore, should gain political control of the country.

[19] All the defendants were perfectly conscious of that mission!

[20] 2 — In the United States of America, the mercenary agency work for Angola and Rhodesia was done mainly by one David Bufkin, a man involved with an illustrated publication devoted to promoting

the myth of mercenarism and called "Soldier of Fortune". And the advertising for the agency work was done in that magazine as well as in newspapers and on television. Approved candidates were sent to Kinshasa, via Paris or Brussels, and under the tutelage of the Zaire embassy in Washington — see p. 517.

[21] At the same time, the F.B.I. had precise knowledge about this traffic in war prostitutes — see p. 114 — and did nothing to disturb it.

[22] The defendants with American passports were thus contracted by Bufkin, for a monthly pay of 1200 dollars, tax free and supplemented by various cash bonuses.

[23] They were quite conscious that they were coming to Angola to join the military forces of the F.N.L.A., whose design and venture was directed towards the sanguinary seizure of political power.

[24] 3 — Inside the borders of Angola, the mercenaries destroyed bridges, buildings and communication lines, smashed property and industrial equipment, and plundered vehicles, money and crops. They mined fields and paths, separated families and spread fear, shame and outrage. Their legend was wrought with rape, sacking, wrongful arrests, burnings, torture and unwarranted killing. Along the paths they used, in the villages they occupied, they left behind them a trail of dead with wide open eyes, charred hopes, stomachs cut open with bayonets, children mangled by shells and the living filled with dread.

[25] It was an orgy of contempt!

[26] But it is a charismatic principle of socialist law, and not of it alone, that penal responsibility must be individualised in terms of guilt.

[27] Moreover, this principle is expressly affirmed in the International Pact on Civil and Political Rights.

[28] Hence the importance of specifying what demerit there has in fact been in the activity of each of the defendants.

[29] All of them put on uniforms and carried a weapon to fight the legitimate government of a free and sovereign foreign country recognised by the community of nations.

[30] All of them consciously and deliberately violated the border of Angola and took part in combat actions within the national territory.

[31] All the defendants were also conscious that they were part of a stable and organised group which was on the fringe of the law and geared to achieve a political plan to be carried out by criminal means.

[32] They therefore constituted a conspiracy, which is punishable under all evolved penal systems — see Art. 263 of the Penal Code in force.

[33] With regard to defendant Callan, an ex-paratrooper in the British army who was sentenced to imprisonment in his country for an assault on a post office, he had the military command of all the anti-national forces stationed in northern Angola and worked very closely with the president of the so-called F.N.L.A. And because some of his men had fired at a vehicle on the mistaken supposition that it was an enemy vehicle, defendant Callan, after having relieved them of their weapons and clothing, shot one of them and ordered the execution of the remaining thirteen. The mass execution took place at 11 a.m. on 1 February 1976, and defendant McKenzie took part in it, as an author of it.

[34] But it is worth while knowing how the slaughter took place:

"He lined them up on the edge of a valley, a little tiny valley, told them to run down into the valley. He ordered the English troops to open fire and they all massed about with their weapons and he cut the lot of them using a sub-machine gun. He didn't kill any of them but blew a lot of people, and as . . . you know . . . as he opened up all their stomachs, blew their arms off, and with all of that eleven guys were literally blown to pieces but still alive, and Copeland again was walking up to them saying . . . you know . . . a guy was saying kill me kill me and Copeland was saying: 'want to die?', so he said: 'yea', and he said: 'Alright, so shoot him' . . . you know." — testimony of mercenary Chris Dempster p. 685.

[35] Apart from the 14 British mercenaries, Callan also killed two Angolans, both of them prisoners, as he himself confessed.

[36] And he also killed a third, with a shot in the mouth, for having committed rape, according to the testimony of John Banks, who said he was present. Most of the witnesses called at the trial spoke of the wave of murders carried out by Callan, and it was the British mercenaries themselves, his companions in arms, who classified him as "a homicidal maniac, who spent a lot of time killing blacks just for fun" — see p. 1142.

[37] Defendant McKenzie, one of the main persons who carried out what Callan willed, took an active part in the massacre of the British mercenaries, whom he shot in cold blood, without any concern for giving them a quick death. He is also guilty of threatening and beating civilians.

[38] Defendant Derek Barker was the head of the military garrison at Santo Antonio da Zaire.

[39] And defendant Gearheart [sic], a veteran from Vietnam, where he served in the American army security section, offered himself as a mercenary in a strange advertisement published in "Soldier of Fortune", and sent 10 dollars to the "Wild Geese Club", a club of mercenaries which has as its high priest the notorious Mike Hoare, responsible for the mass slaughters in the Congo. Contrary to what is claimed by the defendant, the "Wild Geese Club" is not an information agency and, as can be gathered from p. 450 of the case file, the ten dollars he sent were intended for his admission as a member of that sinister organisation.

[40] What is more, the defendant entered Kinshasa identifying himself as a businessman, and he had a solid political education and good general cultural level. During the medical examination, documented on p. [illegible] the defendant described himself as a student of psychology and history.

[41] And although there still remain doubts as to the true reasons for the presence in the north of the country, there are no doubts that he is a highly dangerous character.

[42] Defendant Grillo, a Vietnam war veteran, has a good cultural level and behaved with intense malice. Accentuated malice was also noted in [illegible] of defendants:

Marchant and Wiseman

[43] With regard to defendants Nammock, Acker and McIntyre, their [illegible] levels of dangerousness and their age have been noted in their favour.

[44] Some of the defendants also mined bridges and roads and destroyed property and equipment. It is understood, however, that such acts came within the concept of military operations, so that they are not in themselves sufficient to characterise or fulfil the legal provisions for a crime against the peace.

[45] As regards the holding under duress of the peasants Antonio and Senda Isabel, with which some of the defendants are charged, it is true that the defendants offered them a watch and a certain sum of money to compensate for the losses they had sustained. Such an offer diminishes malice, which is an essential element in the crime of private dentention. Even had this not been so, however, the episode happened in the disorder of the military retreat, and the defendants effected the detention. Even had this not been so, however, the episode happened in short, they could always have used the excuse of necessity.

B.—But it is now important to look into the applicable law.

[46] Mercenarism was not unknown in traditional penal law, where it was always dealt with in relation to homicide.

[47] It was said, in a brief definition, that a mercenary was an agent who committed a crime for wages. The prime motive for the crime was therefore always the feeling of greed, which is moreover the reason for the severe moral condemnation this type of crime has always incurred.

[48] And mercenary homicide, then known as assassination, was treated as a special crime in some legislation, while in others it was seen as a form of premeditated homicide.

[49] In all cases, however, severe punishment was always attached to mercenary homicide.

[50] And certainly throughout the 19th century, there was much debate on whether the most serious penalty should fall on the head of the mercenary, that is on he who carried out the crime, or on that of the person interested in the carrying out of the crime, that is, on he who paid for it to be committed.

[51] The debate ended in parity. In fact, the view prevailed that the moral author of the crime was as responsible as the physical author.

[52] Therefore, this Tribunal does not heed the note often struck by the defence that it was not the defendants who were those most responsible for the crimes they committed, but governments and organisations which, for pecuniary compensation, made them commit such offences.

[53] Yet it is important that in modern penal law, and in the field of comparative law, the mercenary crime lost all autonomous existence and was seen as a common crime, generally speaking aggravated by the profit motive which prompts it. And this mercenary crime, which is known today as "paid crime to order", comes within the laws on criminal complicity, it being through them that the responsibility of he who orders and he who is ordered is evaluated.

[54] In our case, mercenarism is provided for in Art. 20 No. 4 of the Penal Code in force.

[55] This annuls the objection of the defence that the crime of mercenarism has not been defined and that there is no penalty for it.

[56] It is in fact provided for with penalty in most evolved penal systems. As a material crime, of course!

[57] Previously in Congo and Biafra. Only yesterday in Angola. Today in Rhodesia.

[58] In the convulsed history of the past 20 years, and always serving neo-colonial plans, there have always been packs of dogs of war with blood-stained muzzles, engaged in acts of aggression, in crimes against peace and against humanity, decapitating or trying to decapitate revolutions, wrecking or trying to wreck the freedom of peoples . . . Therefore, they have been systematically involved in the commission of international crimes.

[59] And misunderstanding arises when it is proposed and demanded that habitual criminals in the commission of international crime be punished under internal law.

[60] Looking back at its wounds of yesterday, Africa feels that mercenaries are a danger to peace for its children and to the security of its states.

[61] And since these values undoubtedly merit legal protection, the only realistic way to protect them is to regard mercenarism, war to order, as a formal crime.

[62] Hence those who commit the crime of mercenarism, in its consummate form, are all those who, for personal profit, enlist in a group or in forces intending, by military means, to counter the achievement of a foreign people's self-determination or, by the same means, to impose neo-colonial designs on them.

[63] Finally, mercenarism is considered a crime in the view of nations, and is expressly stated to be one in resolutions 2395 (XXIII), 2465 (XXIII), 2548 (XXIV) and 3103 (XXVII) of the General Assembly of the United Nations Organisation, and in OAU statements — Kinshasa 1967, and Addis Ababa 1971.

[64] And acceptance is given to the allegation of the defence that the defendants are not solely guilty. Also guilty, alongside them, are the governments of the countries of which they are nationals, which encouraged their recruitment, armed them and paid them wages. Governments persisting in their racist philosophies and blinded by imperial delirium, which have disregarded UN resolution 2465, and again shown themselves to be against peace for the peoples and unworthy of sharing the company of the community of civilised nations.

[65] Furthermore, the Code of Discipline of the Combatant states expressly that capital punishment is applicable to "enemies". And mercenaries are uncontestably enemies!

[66] Art. 58 of the Angolan Constitutional Law says that laws and regulations in force on 11 November 1975, the date of national independence, will continue to be applicable so long as they are not revoked. And the Code of the Combatant has not been revoked.

[67] Finally, it should be pointed out that the defendants cannot claim the status of prisoners of war, for the definitive reason that they

are irregular members of an army. And it is already on record that in U.N. resolutions a mercenary is regarded as a common criminal.

[68] It is in these terms that all the defendants are considered guilty of the crimes of mercenarism and conspiracy. Defendants Callan and McKenzie, in addition to those crimes, are guilty of that of homocide.

[69] It is understood that having had a military command constitutes an aggravating circumstance.

[70] To judge is, fundamentally, to testify in favour of man.

[71] Therefore, from amid the turmoil of immediate feelings, the tumult of ideas, the redemption proposed by both churches and gendarmes [sic], over and above the crests of this agitated sea swell, it is necessary, in short, to find again a certain concept of the dignity of man and of the contingencies which can effect it.

[72] At the same time, peace is not the absence of war, but the presence of justice.

[73] And justice ends where involvement in contempt and oppression begins . . .

[74] Strangers with knives between their teeth, the mercenaries, came to carve dark wounds along the face of this country. Spreading their sanguinary calculations, they violated children, plundered crops, burned schools, ruined hopes and silenced with bullets the clear laughter of the youth.

[75] And their purpose was to make an entire people return to the frontiers of fear and shame. An invincible and unvanquished people, for whom the greatest wealth lies on the paths of fraternity and in the grave honour of being upright.

This is the crime put to the conscience of this Tribunal!

[76] Consequently, the judges of this Tribunal agree on the judgement of the guilty mercenaries, and in the name of the People's Republic of Angola, sentence as follows; —

[77] The defendants Nammock, Acker and McIntyre to 16 years imprisonment.

[78] The defendants Lawlor, Evans and Fortuin to 24 years imprisonment.

[79] The defendants Wiseman, Marchant and Grillo to 30 years imprisonment.

[80] The defendants McKenzie, Barker, Gearheart [sic] and Costas Georgiou, known as Callan, to the death penalty.

[81] Under the terms of the Service Order of 12th September the case documents, with all the evidence, including the audiovisual record of the trial, will be submitted through the Ministry of Justice to Comrade President of the People's Movement for the Liberation of Angola and the People's Republic of Angola, so that he may confirm or otherwise the death penalties imposed.

The proceedings of the Tribunal are closed.

APPENDIX III

LAW NO. 7/76 OF 1ST OF MAY

With the establishment of the People's Republic of Angola, fruit of centuries of resistance by the Angolan People and of their heroic struggle, under the leadership of MPLA, against foreign domination and oppression, with the achievement of victory in the liberation of the country against the aggression by the forces of international imperialism and its internal agents, it becomes imperative that the Revolution creates and puts into effect the necessary means for its own defence. It is the right and the sacred duty of the Revolution to defend itself strongly and surely against its enemies, both internal and external.

With the institution of the Directorate of Information and Security of Angola, by Decree No. 3/75, of 29th of November, there is now needed the creation of a Tribunal which, with a permanent character, will proceed with the judgment of criminal and counter-revolutionary acts by enemies of the Revolution.

This is the purpose of the present law which, by virtue of article 44 of the Constitutional Law, institutes the People's Revolutionary Court, establishing at the same time the procedural norms which will govern its functioning and work.

In deciding the procedural methods, there was concern to link harmoniously the interests of simplicity and speed of process, avoiding excessive or delaying formalities, with the interests of dignity and gravity of justice, permitting to the accused full guaranties of defence in conformity with the constitutional ruling which so demands.

The People's Revolutionary Court, dealing justice severe but measured, to the enemies of the Revolution, will act with all the legitimacy which accrues to it as the product of the supreme instance of State in the People's Republic of Angola and of the vanguard of the Angolan People, the MPLA.

Guided by uncompromising defence of the interests of the Angolan People and, particularly, of its most exploited classes, the People's Revolutionary Court will effectively watch over the maintenance and continuation of the revolutionary process in train, with the object of the installation of People's Power and of the creation of a just society and a new personality, as the supreme target and reason for being of our struggle.

In this tenor by virtue of sub-paragraph a) of article 38 of the Constitutional Law and by right of the power given in sub-paragraph e) of article 32 of the same Law, the Council of the Revolution decrees and I promulgate the following:

THE LAW CONSTITUTING THE PEOPLE'S REVOLUTIONARY COURT

Article 1
(*Constitution, Jurisdiction and Seat*)

1. The People's Revolutionary Court is constituted, with its seat in the capital of the People's Republic of Angola and with jurisdiction over the whole national territory.

2. The People's Revolutionary Court can act in any part of the national territory, if this is thought to be more convenient for the proper administration of justice.

Article 2

The People's Revolutionary Court is governed by the dispositions of the present document and by the legal regulations that will be published by the government.

Article 3
(Competence)

1. The People's Revolutionary Court is competent to bring to judgment crimes carried out against the Angolan people and their unity, against the sovereignty of the People's Republic of Angola and its territorial integrity, of acts and activities which threaten the principles and fundamental rights stipulated in the Constitutional Law, of those who threaten the organs the State or the MPLA or their titulars, as well as war crimes and crimes against humanity.

2. The People's Revolutionary Court is further competent to try any other crimes if due to their nature, perpetrator or public repercussions, the Court itself should so decide.

Article 4
(Composition)

The People's Revolutionary Court is composed of five judges — a presiding judge and four others named by dispatch by the President of the Republic, after consultation with the Council of the Revolution. Two of the judges should be graduates in Law.

2. The judges are appointed on a service commission for six months, and may combine this [with] other functions.

3. If there is a legal objection to any of the judges, the President of the Republic shall make a substitution after consultation with the Council of the Revolution.

Article 5
(The People's Prosecutor)

1. A People's Prosecutor acts in conjunction with the Court and represents the People's Republic of Angola and the Angolan people. He has the duty of presenting the indictment.

2. The People's Prosecutor is named in the same way as described in points 1 and 2 of the previous article.

3. In the exercise of his functions, he may use counsellors if he considers this to be appropriate.

Article 6
(Official Defence)

The Court will organise a list of official defence counsel chosen by the presiding judge, who will be called to prepare the defence only in cases where no defence lawyer has been indicated by the defendant.

Article 7
(Secretary)

1. A Secretary will work with the Court, and will be responsible for preparing the reports and documents of the case, as well as the whole report concerning the Court, the People's Prosecutor and the official defence.

2. The government will organise a team of persons as necessary to enable the secretary to function as required.

Article 8
(Preparation of the case)

The preparation of the case is secret and will be carried out by the authorities to whom the law attributes this competence.

Article 9
(Presentation of the case)

1. After the preparation of the case, it is presented to the People's Prosecutor who, if he finds that it shows sufficient evidence of a punishable offence, the identity of the offenders and their responsibility, formulates the charge in the terms of the following article and sends the case to the Court.

2. If the People's Prosecutor considers that the case does not show sufficient evidence as mentioned in the point above, no charge is made. He shall state in the report the justifying reasons of fact and law, and shall send the case to the Court.

3. The Court, if it considers the reasons invoked to be pertinent, will order the case to be definitively filed. If it does not, it will return the case to the People's Prosecutor, recommending him to proceed with the charges. The People's Prosecutor will follow this recommendation, or not, as he believes to be right. If not to be followed, he himself will order the case to be definitively filed.

4. If, however, the People's Prosecutor considers that further investigation is necessary to reveal the truth, he will so state in the reports; and send them to the authorities preparing the case.

Article 10
(Charges)

The charges are set out point by point, and should specify:

a) The name and all the facts which help to determine the identity of the defendant;

b) A summary of the punishable fact or facts, with an indication of the time and place where they were committed and all the circumstances that can help to define them or help towards an understanding of the culpability of the defendant;

c) Indication of the laws and rules infringed;

d) Request that the corresponding punishment should be applied to the defendant;

e) List of witnesses with which it is intended to prove the charge, and indication of other proofs.

Article 11
(Decision of the court)

When the case is received by the Court, it will proceed to examine it and afterwards will make a dispatch in one of the following ways:

a) The decision that the case should be the object of a trial, if it is found that there is sufficient substantive evidence to show the criminal responsibility of the defendant;

b) The decision to file the case if it is considered that such substantive evidence does not exist;

c) The decision that the case should be returned to the authorities who prepared it, if it is considered that further investigation is necessary to reveal the truth.

Article 12
(Notice of charges)

If the decision were to be that of point (a) of the previous article the judge will issue a notice of charges, the duplicate of which will be given to the defendant and which must necessarily contain:

a) The content of the charges;

b) The name of an official defence counsel, with the indication that the defendant may call upon the defence counsel of his choice up to the day of the trial;

c) Indication that the case can be seen in the Court office during a period of eight days, and may be freely consulted by the defence counsel;

d) Indication that during this period of eight days the defence counsel can present his case for the defence, in writing; mentioning all the previous questions raised, indicating the defence witnesses and other proofs to be produced at the trial.

Article 13
(Constituting of the Defence Counsel)

1. In order to constitute the defence, official documents are not necessary; the simple naming of such by the defendant in writing or verbally, and the corresponding acceptance by the defence counsel is sufficient.

2. As soon as defence counsel is chosen by the defendant, the intervention of the official defence counsel previously named ceases.

Article 14
(Receipt of the Defence and Setting of the trial date)

1. After the period of eight days, the Court will examine the Defence requirements, resolving all the questions raised and setting a date for the trial.

2. The People's Prosecutor, the defendants and defence counsel are notified of the dispatch fixing the trial date at least 48 hours before the set date.

3. Only the witnesses living in the Court seat area will be notified, the others must be presented at the hearing by the party that has enlisted them.

Article 15
(Public nature of the trial)

1. The trial is public.

2. The presiding judge is responsible for maintaining the order and dignity of the proceedings. He may take such measures as may be appropriate.

Article 16
(Court sessions)

The Court shall be considered to be in session when all the judges, the People's Prosecutor and the defendant are present, apart from the latter, in the case of a person being tried in absentia.

Article 17
(Duties of defence counsel)

If during the hearing the defence counsel do not hold the Court in due respect, or by clear abuse try to delay or obstruct the normal procedure of the work, use injurious, violent or aggressive language against the public authorities or any other persons, or make explanations or comments on matters extraneous to the trial and that could not serve to clarify it, they will be warned by the presiding judge. If, after warnings, this behaviour is repeated, the presiding judge can withdraw their right to speak, entrusting the defence to another counsel chosen by him, without prejudice to criminal and disciplinary proceedings if these should take place against the counsel.

Article 18
(Lack of respect by the defendant)

If the defendant shows lack of respect for the Court, he will be warned and if he continues, he will be ordered to be taken under guard to some Court waiting room or to the prison, which he will only leave to hear the sentence.

Article 19

1. The trial is oral, with the exception of the sentence which is written. All the things which happen during the hearing shall be formulated into a concise court record by one of the secretariat officials, but in this the statements are not included.

2. The presiding judge may, however, decide to make a tape recording of all or some of the statements.

3. The formalities will be the most simple and adequate that reveal the truth, without prejudice to the guarantee of defence allowed to the defendant.

Article 20
(Reading of the charges and the defence)

When the hearing opens, and the defendant or defendants have been brought into the court room the presiding judge will order one of the Court secretariat officials to read the charges and the written defence, which the defendant should have presented.

Article 21
(Identification of the defendant)

The presiding judge will follow by identifying the defendant, asking him for his name, marital status, parentage, profession, nationality, residence, whether or not he has ever been found guilty or detained in prison, and will advise the defendant that he is not obliged to answer questions that are asked of him about the facts of which he is accused.

Article 22
(Examination of the defendant)

1. The examination of the defendant about the facts of which he is accused is done by any of the judges.
2. This is followed by complementary questions to the defendant by the prosecution and defence.
3. If there are co-defendants in the same case, the examination of each one will be made separately, at the end of which they will be confronted with each other if this is necessary in order to reveal the truth.
4. The questions shall not be leading, or deceitful, or accompanied by fraudulent persuasion, false promises or threats.
5. If the defendant pleads guilty, he will be particularly questioned on his motives, and on the time, place, manner and methods used in commiting it.
6. If the defendant denies facts that are already in his statement, or in other statements or documents which have been introduced into the court, the presiding judge can read him the relevant extracts and press him on those facts.

Article 23
(Presentation of evidence)

1. The presentation of evidence by prosecution and defence follows, through the investigation of statements, calling of witnesses, technical evidence, inspections and the exhibition of documents.
2. The witnesses and the experts can be questioned by any of the judges, with the prosecution and defence able to put any complementary questions necessary for improved clarification of the truth.

Article 24
(Closing speeches)

1. This is followed by the closing speeches, given first by the People's Prosecutor and then by the defence. Replies are not permitted.

Article 25
(Closing of the hearing)

1. At the end of the closing speeches the presiding judge will ask the defendant if he has anything further to add in his defence, hearing everything that he has to say towards it.
2. Following this the presiding judge will declare the hearing closed, and the Court will retire to decide on the matters of facts and of law and formulate a sentence.

Article 26
(Sentence)

1. The sentence is given in the name of the People's Republic of Angola and of the Angolan People and shall be written and be personally signed by each judge. The votes of dissenters, if there should be any, will appear only in a secret record.
2. The sentence is publicly read by the Presiding Judge, the presence of the defendant, the People's Prosecutor and defence counsel being obligatory.

Article 27
(Appeal)

1. There is no appeal against the decisions of the court, whether final or interim.
2. The only kind of appeal permitted is to the Court, itself, against failings, ambiguity or lack of clarity in the sentence or dispatches. The court will immediately and definitively decide on it.

Article 28
(Trial in absentia)

An absent defendant will be tried in absentia and the presiding judge will designate an official defence counsel for him.

Article 29
(Validity)

This law comes into force immediately.

Read and approved by the Council of the Revolution
Promulgated on 1st May 1976
Publish it.

The President of the Republic, António Agostinho Neto

APPENDIX IV

"TEXTS FOR THE ANGOLAN COMBATANT"

LAW OF DISCIPLINE

CHAPTER III — REWARDS, DECORATIONS, PENALTIES

1—Rewards and penalties are intended not only to reinforce the means which discipline and education give to those with responsibility in the direction of their subordinates, but also to give effect to equitable justice.

Rewards encourage zeal, dedication, punctuality and respect.

Penalties regulate conduct, combat and prevent lapses in duty and law.

I—REWARDS

2—Rewards are of the following kinds:

a) Citations in service orders for acts of courage and self-denial.

b) Oral congratulations, attesting to satisfaction for behaviour or disciplinary spirit.

c) Leave permission of every kind: consessionary, family visits, personal affairs and others to be established by service order.

3—The various leaves are granted in the following way:

Type of leave	Beneficiary	Authority granting leave
Leave of 24-36 hours	Everyone	Detachment Commander
Dispensation from work for 1 day	Everyone	Detachment commander and in his absence the most senior responsible person
Permission to sleep away from quarters	Everyone	Detachment commander
Permission for absence from meals	Everyone	Commander or delegated responsible person
Leave for more than 36 hours	Everyone	Regional command on the recommendation of the respective Disciplinary Council
Leave for more than 15 days	Everyone	Military Commission on the recommendation of Disciplinary Council

II — DECORATIONS

4—Any combatant can be awarded a decoration by the Executive for acts of bravery, exemplary spirit, length of service in the ranks, etc. The relevant Disciplinary Councils must be consulted in the award of decorations.

III — PENALTIES

A — Offences

5—Offences are classified in the following way:

a) Offence with regard to laws, authorities and people.

b) Public demonstration, in any way, of opinions which would prejudice discipline or which are contrary to the statutory principles and program of MPLA.

c) Lying or concealment of offences.

d) Disclosure of secret or confidential information.

e) Breaches of military regulations or of instructions in service orders.

f) Indolence, idleness, ill-will, negligence in duty.

g) Offences against the dignity of the struggle and of the units, drunkenness, brawling, rowdiness, ill-advised practical jokes, intrigue, embezzlement of funds and equipment etc.

h) Failure to observe police regulations of the entity or countries which give us hospitality.

i) Taking on duties which are not authorized by superiors.

B — RIGHT OF PUNISHMENT AND EXERCISE OF THIS RIGHT

6—Every combatant, whether in authority or not, has the duty of contributing to the maintenance of discipline, by pointing out his own offences or the offences of others. The authorities must give prompt punishment to their subordinates.

7—Any punishment given or sought requires the presentation of evidence and proof.

8—The accused must be heard before the punishment is carried out.

C — DECISION ON PENALTIES

9—The authorities must act so as to prevent offences. When they are obliged to use penalities, they should be guided by the following considerations:

a) Justice and impartiality. Penalties are not an exercise of personal authority. The authorities are merely agents to carry out the regulations. The penalty is proportional to the gravity of the offence and to the circumstances in which it was committed. The person responsible must take into account the background of the combatant to be punished, his usual behaviour, his character and his length of service in the ranks. The first penalty must be carefully studied owing to the importance it carries in the eyes of the combatant.

b) Certain circumstances are of a kind to aggravate the offence, for example: if there is repetition, if it is carried out openly, if it is collective.

c) In no case can individual offences be dealt with by collective punishment.

d) Any penalties can be suspended or cancelled by higher instance to those which determined them.

D — CATEGORY OF PENALTIES

10—The various kinds of penalties are as follows:

a) Oral warning.

b) Simple, oral rebuke.

c) Rebuke on parade. This is written and recorded on individual records and involves confinement to quarters.

d) Simple imprisonment. This is recorded and can involve loss of rank. Involves later confinement to quarters.

e) Severe imprisonment. This is recorded and involves later detention and loss of rank.

f) Suspension of right to fight. Recorded.

g) Expulsion. Recorded. On the decision of the Directorate on recommendation from the Disciplinary Council.

h) Death penalty by firing squad. To be decided under special law.

CATEGORY	TO WHOM DIRECTED	AUTHORITY WHO PUNISHES
Warning	Everyone	Everyone
Simple rebuke	Everyone	Everyone
Recorded rebuke	Everyone	Zone Commander upwards
Simple imprisonment	Everyone except Commanders	Zone Commander upwards on recommendation of the relevant Disciplinary Council
Severe imprisonment	Everyone and deserters or disarmed enemies	Zone Commander upwards on recommendation of the relevant Disciplinary Council
Suspension	Everyone	Military Commission on recommendation of the relevant Disciplinary Council
Expulsion	Everyone	Directing Committee on recommendation of the relevant Disciplinary Council
Death penalty	Everyone and enemies	Directing Committee (special regulations)

IV — DISCIPLINARY COUNCILS

11—The Disciplinary Councils are consultative organs in the awarding of penalities and rewards.

12—The Zonal and Regional Councils must be constituted thus:

a) If the offender is a combatant — by the Commander, the Political Commissar and a combatant.

b) If the offender is a civilian — by the Commander, the Political Commissar and by a civilian.

c) In any of these cases the setting up of a defence is always allowed.

MATSENDE, 10th July 1966
The Military Commission

(Approved in the Executive Meeting)

PEOPLE'S MOVEMENT FOR THE LIBERATION OF ANGOLA SERVICE ORDER

Considering the disposition in sub-paragraph h, paragraph No. 10 of Section D of Chapter III of the LAW OF DISCIPLINE FOR THE COMBATANT, and confirming the need to make application of the death penalty conditional on prior higher consideration,

I RULE:

In future, no death penalty by firing squad can be carried out unless it has previously been confirmed by the President of MPLA.

Dr. Agostinho Neto
President of MPLA

12th September 1970.

APPENDIX V

CONSTITUTIONAL LAW OF THE PEOPLE'S REPUBLIC OF ANGOLA

PART I

Basic Principles

ARTICLE 1

The People's Republic of Angola shall be a sovereign, independent and democratic State whose prime objective shall be the Angolan people's total liberation from the vestiges of colonialism and the domination and aggression of imperialism, and building a prosperous and democratic country entirely free from any form of exploitation of man by man, thereby fulfilling the aspirations of the masses.

ARTICLE 2

All sovereignty shall be vested in the Angolan people. The MPLA, their legitimate representative, constituted by a broad front which includes all patriotic forces engaged in the anti-imperialist struggle, shall be responsible for the political, economic and social leadership of the nation.

ARTICLE 3

The masses shall be guaranteed broad effective participation in the exercise of political power, through the consolidation, expansion and development of organisational forms of people's power.

ARTICLE 4

The People's Republic of Angola shall be a unitary and indivisible State whose inviolable and inalienable territory shall be that defined by the present geographical limits of Angola, and any attempt at separatism or the dismembering of its territory shall be vigorously combated.

ARTICLE 5

Economic, social and cultural solidarity shall be promoted and intensified between all regions of the People's Republic of Angola, for the common development of the entire Angolan nation and the elimination of remnants of regionalism and tribalism.

ARTICLE 6

Under the leadership of MPLA and with its President as Commander-in-Chief, the People's Armed Forces for the Liberation of Angola (FAPLA), the armed wing of the people, shall be institutionalised as the national army of the People's Republic of Angola. It shall be the responsibility of FAPLA to defend the country's territorial integrity and to participate alongside the people in production, and hence in national reconstruction.

The Commander-in-Chief of the People's Armed Forces for the Liberation of Angola (FAPLA) shall appoint and dismiss high-ranking military officials.

ARTICLE 7

The People's Republic of Angola shall be a secular State, and there shall be complete separation of the State and religious institutions. All religions shall be respected, and the State shall afford churches and places and objects of worship protection so long as they comply with the State laws.

ARTICLE 8

The People's Republic of Angola shall regard agriculture as the base and industry as the decisive factor in its development. The State shall orientate and plan the national economy with a view to the systematic and harmonious development of all the country's natural and human resources and the use of wealth for the benefit of the Angolan people.

ARTICLE 9

The People's Republic of Angola shall promote the establishment of just social relations in all sectors of production, furthering and developing the public sector and fostering cooperative forms. One of the very special tasks of the People's Republic of Angola shall be to solve the land problem in the interests of the peasant masses.

ARTICLE 10

The People's Republic of Angola shall recognise, protect and guarantee private activities and property, even those of foreigners, so long as they are useful to the country's economy and to the interests of the Angolan people.

ARTICLE 11

All natural resources in the soil and subsoil, in the territorial waters, on the continental self and in the air space shall be the property of the State, which shall determine how they shall be used.

ARTICLE 12

The fiscal system shall be guided by the principle of graduated direct taxation, and no privileges of any kind shall be permitted in fiscal matters.

ARTICLE 13

The People's Republic of Angola shall vigorously combat illiteracy and obscurantism, and promote the development of education at the service of the people, and of a true national culture, enriched by the revolutionary cultural gains of other peoples.

ARTICLE 14

The People's Republic of Angola shall respect and apply the principles of the Charter of the United Nations and of the Charter of the Organization of African Unity. It shall establish relations of friendship and cooperation with all States, based on the principles of mutual respect for sovereignty and territorial integrity, equality, non-interference in the internal affairs of each country, and reciprocal benefits.

ARTICLE 15

The People's Republic of Angola supports and is in solidarity with the struggle of the peoples for national liberation, and it shall establish relations of friendship and cooperation with all democratic and progressive forces in the world.

ARTICLE 16

The People's Republic of Angola shall not join any international military organisation, nor shall it allow the installation of foreign military bases on its national territory.

PART II

Fundamental Rights and Duties

ARTICLE 17

The State shall respect and protect the human person and human dignity. Every citizen shall have the right to the free development of personality while maintaining the respect due to the rights of other citizens and to the higher interests of the Angolan people. The life, liberty, personal integrity, good name and repute of every citizen shall be protected by law.

ARTICLE 18

All citizens shall be equal before the law and enjoy the same rights. They shall be subject to the same duties, without any distinction based on colour, race, ethnic group, sex, place of birth, religion, level of education, or economic or social status.

Any acts designed to jeopardize social harmony or create discrimination or privileges based on such factors shall be severely punished under the law.

ARTICLE 19

It shall be the right of the highest and indeclinable duty of every citizen of the People's Republic of Angola to participate in the defence

of the country's territorial integrity and to defend and extend the revolutionary gains.

ARTICLE 20

All citizens aged over eighteen, other than those legally deprived of political rights, shall have the right and the duty to take an active part in public life, to vote and be elected or appointed to any State organ, and to discharge their mandate with full dedication to the cause of the country and the Angolan people.

ARTICLE 21

It shall be the duty of every elected citizen to account for the discharge of his mandate to the electors who have chosen him, who shall at any time have the right entirely to revoke the mandate granted.

ARTICLE 22

In the context of the achievement of the basic objectives of the People's Republic of Angola, the law shall ensure freedom of expression, assembly and association.

ARTICLE 23

No citizen shall be arrested and brought to trial except under the terms of the law, and all accused shall be guaranteed the right of defence.

ARTICLE 24

The People's Republic of Angola shall guarantee individual freedoms, namely the inviolability of the home and the privacy of correspondence, subject to the limits especially provided by the law.

ARTICLE 25

Freedom of conscience and belief shall be inviolable. The People's Republic of Angola shall recognise the equality and guarantee the practice of all forms of worship compatible with public order and the national interest.

ARTICLE 26

Work shall be the right and duty of all citizens, each of whom must produce according to his ability and be remunerated according to his work.

ARTICLE 27

The State shall promote the requisite measures to ensure the right of citizens to medical and health care, and also the right to assistance in childhood, motherhood, disability, old age and any other form of incapacity for work.

ARTICLE 28

Fighters in the national liberation war who have been disabled and the families of fighters who died in the struggle shall, as a debt of honour of the People's Republic of Angola, have the right to special protection.

ARTICLE 29

The People's Republic of Angola shall promote and guarantee the access of all citizens to education and culture.

ARTICLE 30

The People's Republic of Angola must create political, economic and cultural conditions which effectively enable citizens to enjoy their rights and discharge their duties in full.

PART III

State Organs

Chapter I

PRESIDENT OF THE REPUBLIC

ARTICLE 31

The President of the People's Republic of Angola shall be the President of the MPLA.

As Head of State, the President of the Republic shall represent the Angolan nation.

ARTICLE 32

The President of the Republic shall have the following specific functions:

(*a*) to preside over the Council of the Revolution and direct its proceedings;
(*b*) to swear in the Government appointed by the Council of the Revolution;
(*c*) to declare war and make peace, following authorisation by the Council of the Revolution;
(*d*) to swear in the provincial commissioners appointed by the Council of the Revolution on the recommendation of the MPLA;
(*e*) to sign, promulgate, and publish the laws of the Council of the Revolution, Government decrees and statutory Ministerial decrees;
(*f*) to direct national defence;
(*g*) to pardon and commute sentences;
(*h*) to indicate, from among the members of the Council of the Revolution, the person who shall replace him in his absence or when temporarily prevented from exercising his functions;
(*i*) to discharge all other functions conferred on him by the Council of the Revolution.

ARTICLE 33

In case of the death, renunciation or permanent incapacity of the President of the Republic, the Council of the Revolution shall appoint from among its members the person who shall provisionally exercise the duties of the President of the Republic.

Chapter II

PEOPLE'S ASSEMBLY

ARTICLE 34

The People's Assembly shall be the supreme State body in the People's Republic of Angola.

A special law shall establish its composition and its system of election, and also its jurisdiction and manner of functioning.

Chapter III

COUNCIL OF THE REVOLUTION

ARTICLE 35

Pending the total liberation of the national territory and fulfilment of the conditions for the institution of the People's Assembly, the Council of the Revolution shall be the supreme organ of State power.

ARTICLE 36

The Council of the Revolution shall comprise:

(*a*) the members of the MPLA Political Bureau;
(*b*) the members of the FAPLA General Staff;
(*c*) the Government members appointed by the MPLA to this effect;
(*d*) the Provincial Commissioners;
(*e*) the Chiefs of Staff and Political Commissars of the Military Fronts.

ARTICLE 37

The Council of the Revolution shall be presided over by the President of the Republic.

ARTICLE 38

The Council of the Revolution shall exercise the following duties:

(*a*) to discharge legislative functions, which it may delegate to the Government;
(*b*) to define and conduct the country's domestic and foreign policy;
(*c*) to approve the General State Budget and the Economic Plan drawn up by the Government;
(*d*) to appoint and dismiss the Prime Minister and other members of the Government, on the recommendation of the MPLA;
(*e*) to appoint and dismiss Provincial Commissioners, on the recommendation of the MPLA;
(*f*) to authorise the President of the Republic to declare war and make peace;
(*g*) to decree a state of siege or a state of emergency;
(*h*) to decree amnesties.

Chapter IV

GOVERNMENT

ARTICLE 39

The Government shall be constituted by the Prime Minister, the Ministers and the Secretaries of State.

The Government shall be presided over by the Prime Minister.

ARTICLE 40

It shall be incumbent on the Government, as the executive organ, to conduct the State's domestic and foreign policy, under the leadership of the Council of the Revolution and of the President of the Republic, and to supervise public administration as a whole.

ARTICLE 41

The Government's functions shall be especially:

(*a*) to guarantee the safety of persons and property;

(*b*) to draw up the general State budget and to implement it once it is approved by the Council of the Revolution;

(*c*) to draw up the Economic Plan and to implement it once it is approved by the Council of the Revolution.

ARTICLE 42

The Government may exercise by decree the legislative functions delegated to it by the Council of the Revolution. The implementation of the laws passed by the Council of the Revolution and of Government decrees shall be incumbent on the Ministers.

ARTICLE 43

The Government may meet with the Council of the Revolution, in full or in part, whenever the latter may so decide.

Chapter V

COURTS

ARTICLE 44

The discharge of judicial functions shall be exclusively vested in the Courts with a view to the fulfilment of democratic justice.

The organisation, composition and competence of the Courts shall be established by law.

ARTICLE 45

Judges shall be independent in the discharge of their functions.

Chapter VI

ADMINISTRATIVE ORGANISATION AND ADMINISTRATIVE BODIES

ARTICLE 46

The People's Republic of Angola shall be administratively divided into *Provincias* (Provinces), *Concelhos* (Councils), *Comunas* (Communes), *Circulos* (Circles), *Bairros* (Neighbourhoods) and *Povoacões* (Villages).

ARTICLE 47

The local administration shall be guided by the combined principles of unity, decentralisation and local initiative.

ARTICLE 48

In a Province, the Provincial Commissioner shall be the direct representative of the Council of the Revolution and of the Government.

The Government shall be represented on the Council by the Local Commissioner, in the Commune by the Commune Commissioner and in the Circle by the Delegate, who shall be appointed on the recommendation of the MPLA.

ARTICLE 49

Each Province shall have a Provincial Commission, which shall be presided over by the Provincial Commissioner and shall exercise legislative functions in matters of exclusive concern to the Province.

ARTICLE 50

The Administrative Bodies of the Council, Commune, Neighbourhood and Village shall be, respectively, the Town Hall, the Commune Commission, and the People's Neighbourhood or Village Commission.

ARTICLE 51

The local authorities shall have legal personality and shall enjoy administrative and financial autonomy.

ARTICLE 52

The structure and jurisdiction of Administrative Bodies and other organs of local administration shall be established by law.

PART IV

Symbols of the People's Republic of Angola

ARTICLE 53

The symbols of the People's Republic of Angola shall be the FLAG, the INSIGNIA and the NATIONAL ANTHEM.

ARTICLE 54

The NATIONAL FLAG shall consist of two colours in horizontal bands. The upper band shall be bright red and lower band black.

Bright red shall represent the blood shed by Angolans under colonial oppression, the national liberation struggle, and the revolution.

Black shall represent the African Continent.

In the centre a composition shall be formed of a segment of a cog-wheel symbolising the working class and industrial production; a machete symbolising the peasant class, agricultural production and the armed struggle; and a star symbolising internationalism and progress.

The cog-wheel, the machete and the star shall be yellow, representing the country's wealth.

ARTICLE 55

The insignia of the People's Republic of Angola shall be composed of a segment of a cog-wheel and sheafs of maize, coffee and cotton, representing respectively, the working class and industrial production, and the peasant class and agricultural production.

At the foot of the design, an open book shall symbolise education and culture and the rising sun representing the new country. In the centre a machete and a hoe shall symbolise work and the beginning of the armed struggle. At the top, a star shall symbolise internationalism and progress.

In the lower part of the emblem, a golden band shall bear the inscription of 《People's Republic of Angola》

ARTICLE 56

The National Anthem shall be 《ANGOLA AVANTI》 (《Forward Angola》)

PART V

Final and Transitional Provisions

ARTICLE 57

Pending the establishment of the Assembly with constitutional powers, an amendment to the present Constitution may be made only by the MPLA Central Committee.

ARTICLE 58

The laws and regulations at present in force shall be applicable unless repealed or amended and only so long as they do not conflict with the spirit of the present law or the Angolan revolutionary process.

ARTICLE 59

All treaties, agreements and alliances to which Portugal has committed Angola which are contrary to the interests of the Angolan people shall be reviewed.

ARTICLE 60

The present document shall enter into force at zero/zero hours on 11 November 1975.

Approved by acclamation by the Central Committee of the People's Movement for the Liberation of Angola, on 10 November 1975.

António Agostinho Neto, President of the MPLA.

APPENDIX VI

INTERNATIONAL COMMISSION OF ENQUIRY ON MERCENARIES

Declaration on the Compliance of Angolan Procedural Law with the Universal Principles Guaranteeing Respect for the Right to Defence

I. The effective consecration of respect for the rights of defence demands, according to principles common to different juridical systems, the observance of the following rules:

a) the defendant has a right to know the charges that are being made against him;

b) the defendant has a right to examine the case file;

c) the defendant has a right to question the witnesses for the prosecution;

d) the defendant has a right to be heard;

e) the defendant has a right to present his own witnesses;

f) the defendant has a right to be assisted by counsel;

g) the trial must be public.

II. An analysis by the International Commission of Enquiry of Law [No.] 7/76 of 1st [of] May, which creates the People's Revolutionary Court and lays down the procedural norms which govern the court, shows that the above mentioned principles referring to the right of defence have been fully respected. In fact:

a) sub-paragraph (a) of Article 12 in conjunction with Article 10 of the Angolan law stipulates that the defendant is obligatorily notified of the charges against him, namely, a brief statement of the punishable acts, an indication of the laws and rules which were violated and the demand for application of the corresponding penalties.

b) sub-paragraph (c) of Article 12 consecrates the right of the defendant, through his counsel, to have access and freely consult the case file during an eight day period.

c) No. 2 of Article 23 of the Angolan law provides for the right of the defendant to question the witnesses for the prosecution.

d) The right of the defendant to be heard is guaranteed by Articles 20, 22 nos. 1 and 2, 24 and 25 no. 1, all from the above-mentioned Law [No.] 7/76.

e) Article 12 sub-paragraph (d) and Article 23 no. 1 stipulate that the defendant may present his own witnesses and that these shall be heard.

f) The right to be assisted by counsel is effectively guaranteed by Article 12, sub-paragraph (b) and by Article 13, not only by the right which the defendant has of naming a defence counsel of his own choice up to the day of the trial, but also by the obligation of the Court to name an official defence counsel in the notice of charges.

g) Finally, Article 15 no. 1 prescribes that the trial is public.

III. The principle "nullum crimen sine lege" according to which no fact is considered a crime and therefore punishable without a pre-existing law declaring it as such, is a principle which is recognized by the different juridical systems and is consecrated in the Constitutional Law of the People's Republic of Angola and reaffirmed in Law [No.] 7/76 of 1st [of] May, which creates the People's Revolutionary Court. It is respected by the indictment presented in the present case as it is based on internal law and on the norms and principles of international law that the People's Republic of Angola, as a sovereign State, decided to make its own.

LUANDA, 12 June 1976

INTERNATIONAL COMMISSION OF ENQUIRY ON MERCENARIES

Final Statement and Verification of the Fairness of the Procedure of the Trial in Accord with the Criteria Previously Laid Down

Having attended and observed all sessions of the trial of the mercenaries before the People's Revolutionary Court, the International Commission of Enquiry on Mercenaries is satisfied that the trial has been fair and conducted with dignity and solemnity.

The Commission is further convinced that all rules of procedure have been interpreted in favour of or extended in favour of observing the rights of the defendants.

LUANDA, 19 June, 1976

APPENDIX VII

INTERNATIONAL COMMISSION OF ENQUIRY ON MERCENARIES

DECLARATION OF LUANDA, 10TH JUNE, 1976

I. For twenty years now, there have been armed interventions by mercenaries against the sovereignty of new states or against liberation movements. The mass media exposed at the time the massacre at Stanleyville, the armed interventions in Cuba, Southern Sudan, Nigeria during the civil war, in Guinea, Palestine, etc. Thus several African leaders were assassinated.

II. In the most recent period, the independence of Angola and the proclamation of the People's Republic have been quickly followed by military intervention by the Republic of South Africa and the Republic of Zaire. Besides these interventions by regular armies, groups of mercenaries likewise invaded Angolan territory, where they engaged in armed actions of various kinds (attacks on detachments of the national Angolan army, ambushes, planting of mines, destruction of bridges and buildings), in the summary execution of prisoners and in the massacres of civilians.

III. The mercenaries who invaded Angola had been recruited in the United States, Great Britain, France, Belgium, Holland and Portugal. Some of them were contacted by way of advertisements in the press and television broadcasts. Not only do various documents establish the existence of private recruiting agencies in the United States and Great Britain, but there are also periodicals like *Soldier of Fortune*, from Colorado, which campaign for the recruitment of mercenaries. It is clear that the recruitment, travel and equipment of mercenaries could not be accomplished without the tacit agreement of the governments in the countries where they are recruited and equipped. More particularly, inasmuch as the intervention of the mercenaries is directed against the liberation of peoples from colonial and neo-colonial domination, there can be no doubt that they act in the service of those who would like to suppress or prevent their liberation. This is all the more obvious since many of the countries concerned, in particular the United States of America, have legislation against mercenarism which is not applied.

IV. In fact, international organizations have condemned these activities on several occasions: Resolutions 2395 (XXIII), 2465 (XXIII), 2548 (XXIV) and 3103 (XXVII) of the United Nations General Assembly; Statements of the Heads of State and Government of the OAU, Kinshasa 1967 and Addis Ababa 1971; but these condemnations of

mercenarism, which we applaud, have had no practical effect and public opinion has not yet forced the relevant States to give them consideration. Unfortunately, the too frequent glorification of mercenary activity by the mass media has not made it any easier to mobilise the great force which international public opinion represents.

Moreover, despite the victory won by the People's Republic of Angola in its just fight against foreign intervention, there are reasons for thinking that new actions of a similar kind are now being prepared in Southern Africa and other parts of the world. The concentration of mercenaries has been discovered in Namibia and in Zimbabwe, under the aegis of the minority racist regimes now in power in these countries. Puerto Rico is similarly used as a base for mercenary aggression in Latin America.

Finally, new forms of mercenarism are continually being created in response to new needs to repress workers' struggles or movements for national independence throughout the world. Multinational corporations and espionage agencies make more and more use of them.

In all these aspects, mercenarism is revealed as the instrument of those who attempt to maintain, establish or restore fascism, colonialism, neo-colonialism and racism and, more generally, of imperialism's counter-offensive against the progress of liberty and peace in the world.

V. The members of the International Commission of Enquiry on Mercenaries, called together at the initiative of the Government of the People's Republic of Angola, coming from all the continents and representing forty-two countries, at a plenary session held in Luanda on 10th June 1976, have decided to draw the attention of international public opinion to the seriousness of the menace which the armed intervention of mercenaries presents to peace in Africa and the whole world. It is urgent to act now to prevent the recruitment and travel of mercenaries to Namibia and Zimbabwe.

The imperialist powers are wholly responsible for the destruction and the crimes done in the past and which can be repeated in the future on African soil. Public opinion can and must put an end to military intervention by intermediaries. The drafting of an International Convention prohibiting recruitment, travel and arming of mercenaries, and all kinds of support whatsoever for their activities, should be strongly demanded of all countries.

We appeal to all governments to adhere to the international principles set out in United Nations resolutions and declarations of the Organization of African Unity, to sign the International Convention, to ensure that their own national legislation accords with it, and to enforce its provisions effectively.

The members of the Commission hope that a White Book will be published on the activities of mercenaries in Africa and in all the world. They ask those who are able to provide information on this subject to send it to the Minister of Justice of the People's Republic of Angola. They appeal to all progressive people and forces in the world to make every effort to destroy this scourge of humanity which is mercenarism.

LUANDA, 10 June 1976

APPENDIX VIII

DRAFT CONVENTION ON THE PREVENTION AND SUPPRESSION OF MERCENARISM

PREAMBLE

The High Contracting Parties

Seriously concerned at the use of mercenaries in armed conflicts with the aim of opposing by armed force the process of national liberation from racist colonial and neo-colonial domination;

Considering that the crime of mercenarism is part of a process of perpetuating by force of arms racist colonial or neo-colonial domination over a people or a State;

Considering the resolutions of the United Nations (Res. 2395 (XXIII), 2465 (XXIII), 2548 (XXIV) and 3103 (XXVIII) of the General Assembly) and of the Organization of African Unity (ECM/Res. 5 (III), 1964; AHG/Res. 49 (IV), 1967; ECM/Res. 17 (VII), 1970; and OAU Declaration on the Activities of Mercenaries in Africa — CM/St. 6 (XVII)), which have denounced the use in these armed conflicts of mercenaries as a criminal act, and mercenaries as criminals, and which have urged States to take forceful measures to prevent the organization, recruitment and movement on their territory of mercenaries, and to bring to justice the authors of this crime and their accomplices;

Considering that the resolutions of the UN and the OAU and the statements of attitude and the practice of a growing number of States are indicative of the development of new rules of international law making mercenarism an international crime;

Convinced of the need to codify in a single text and to develop progressively the rules of international law which have developed in order to prevent and suppress mercenarism, the High Contracting Parties are convinced of the following matters:

Article One
(*Definition*)

The crime of mercenarism is committed by the individual, group or association, representatives of state and the State itself which, with the aim of opposing by armed violence a process of self-determination, practices any of the following acts:

a) organizes, finances, supplies, equips, trains, promotes, supports or employs in any way military forces consisting of or including persons who are not nationals of the country where they are going to act, for personal gain, through the payment of a salary or any other kind of material recompense;

b) enlists, enrols [sic] or tries to enrol in the said forces;

c) allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above-mentioned forces.

Article Two

The fact of assuming command over mercenaries or giving orders may be considered as an aggravating circumstance.

Article Three

1. When the representative of a State is responsible by virtue of the foregoing provisions for acts or omissions declared by the foregoing provisions to be criminal, he shall be punished for such an act or omission.

2. When a State is responsible by virtue of the foregoing provisions for acts or omissions declared by the foregoing provisions to be criminal, any other State may invoke such responsibility:

(a) in its relations with the State responsible, and

(b) before competent international organizations.

Article Four

Mercenaries are not lawful combatants. If captured they are not entitled to prisoner of war status.

Article Five

(Crimes of mercenarism and other crimes for which mercenaries can be responsible)

A mercenary bears responsibility both for being a mercenary and for any other crime committed by him as such.

Article Six

(National legislation)

Each contracting state shall enact all legislative and other measures necessary to implement fully the provisions of the present Convention.

Article Seven

(Jurisdiction)

Each contracting State undertakes to bring to trial and to punish any individual found in its territory who has committed the crime defined in Article I of the present Convention, unless it hands him over to the State against which the crime has been committed or would have been committed.

Article Eight

(Extradition)

1. Any State in whose territory the crime of mercenarism has been committed or of which the persons accused of the crimes defined in Article I are nationals, can make a request for extradition to the State holding the persons accused.

2. The crimes defined in Article I being deemed to be common crimes, they are not covered by national legislation excluding extradition for political offences.

3. When a request for extradition is made by any of the States referred to in paragraph 1, the State from which extradition is sought must, if it refuses, undertake prosecution of the offence committed.

4. If, in accordance with paragraphs 1-3 of this article, prosecution is undertaken, the State in which it takes place shall notify the outcome of such prosecution to the State which had sought or granted extradition.

Article Nine

(Judicial guarantees)

Every person or group brought to trial for the crime set out in Article I is entitled to all the essential guarantees of a fair and proper trial. These guarantees include:

the right of the defendant to get acquainted in his native language with all the materials of the criminal case initiated against him, the right to give any explanation regarding the charges against him, the right to participate in the preliminary investigation of the evidence and during the trial in his native language, the right to have the services of an advocate, or defend himself if he prefers, the right to give by himself or through an advocate testimony in his defence, to demand that his witnesses be summoned and participate in their investigation as well as in the investigation of witnesses for the prosecution.

Article Ten

(Mutual assistance for criminal proceedings)

The Contracting Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the crimes defined in Article I of this Convention.

Article Eleven

(Duty of States to ensure effective punishment)

Every contracting State shall take all administrative and judicial measures necessary to establish effective criminal punishment for persons and groups guilty of crimes set out in Article I of this Convention. In particular, the State where a trial takes place shall ensure that effective and adequate punishment shall be meted out to the guilty.

Article Twelve

(Settlement of disputes)

Any dispute relating to the interpretation or application of the present Convention shall be settled either by negotiation or by any International Tribunal or Arbitrator accepted by all the Parties concerned.